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Supreme Court of the United States

October Term, A. D. 1958.

ODD FELLOWS OAKRIDGE CEMETERY ASSOCIATION; PALM — I WILL LODGE NO. 58; PIPEFITTERS ASSOCIATION LOCAL UNION 597 — U. A.; VERNA UPELL ALBRIGHT; STANLEY C. BATTY and KRISTINE BATTY, his wife; WALTER BATTY; CLARENCE H. BELLMAN; ANNA B. BOLTON and JANE E. PRINZ, sisters; HUGH F. BRENNAN and CARRIE HESER BRENNAN, his wife; HAZEL M. BRIER; MATTHEW BURG; JENNIE CLINE; JACOB A. COOK and FLORA A. COOK, his wife; RUTH EDITH CRAMER; MARY E. CROSS; DU ROY B. DENNHARDT and ANN E. DENNHARDT, his wife; LOLA MAY DEUBEN; MINNIE DRINHAUS; DOROTHEA A. DUNNE; ROBERT H. EHLERS and EDITH A. EHLERS, his wife; EDITH FISCHER; FRANK J. FOLZ and DORA N. FOLZ, his wife; FLORENCE ANDREN FREED; ARLINE GARBER and PHYLLIS KRAMER, sisters; ANNA M. GEISSLER and ERNEST GEISSLER, her son; ROSEL GOLDSCHMIDT; EMILY CRAMER GROSSMAN; JULIUS E. HAEMMERLE and MARGUERITE H. HAEMMERLE, his wife; MARGARET HALLEMAN; MAMIE HAND; ARTHUR L. HENRIKSON and BEATRICE HENRIKSON, his wife; MILDRED HERMAN; ETHEL M. HILL; MARY ASHER HOOVER; WILLIAM J. HOSKINS; ESTELLA A. HURD; HARRIET E. JENKINS; CHRISTINE JURS; REUBEN C. KELBLE; JULIA KLEINSCHMIDT; EDWARD A. KOLSTEDT and ESTHER M. KOLSTEDT, his wife; IDA M. KUEHNLE; ELMER P. LADENDORF and EMMA M. LADENDORF, his wife; LOUISE LITTLE; LUCILLE L. LORENCE; GERTRUDE E. MAHNKE; EDWARD H. MENKE; JULIA T. MICHEL; WILLIAM J. MUNRO and HAZEL MUNRO, his wife; FRED MURPHY and ALMA MURPHY, his wife; MABEL L. NELSON; MAY NEU; SAMUEL F. NORMAN, individually and as Conservator of the Estate and Person of Ralph Reynolds, Incompetent; NICHOLAS OEHMEN and ALICE V. OEHMEN, his wife; EARL J. OVERTON and LUELLA A. OVERTON, his wife; WILLIAM A. PASSOW; MABEL E. PRESSLER; IRMA H. RADTKE; MATTIE SPIECE RAY; LAWRENCE RECKNER; PAUL E. RECKNER and PEARL M. RECKNER, his wife; LINCOLN RODMAN and HAZEL RODMAN, his wife; WILLIAM A. SCHALK; JOHN W. SCHIRMER and ELSIE M. SCHIRMER, his wife; BERTHA M. SMILIE; CLIFFORD P. SMITH and HARRIET E. SMITH, his wife; MILDRED E. SMITH; SHARON SNOW; JAMES STEWART and INA M. STEWART, his wife; EVA L. STUBBE; MARIE C. SURPLUS; ELSIE SWATEK; LAWRENCE J. TAMM and BESSIE M. TAMM, his wife; LOUISE R. TAMM; MAUD THORNTON; JULIA C. WEIGERT; EDWARD WHITE; RUDOLPH C. WILLIAMS and FLORENCE E. WILLIAMS, his wife; ADELINE G. VERBURG; ELAINE WANG; HARRY E. WRIGHT and ANNE I. M. WRIGHT, his wife; and GEORGE ZILBERMAN and BESSIE ZILBERMAN, his wife,
Appellants,

vs.

OAKRIDGE CEMETERY CORPORATION, VILLAGE OF WESTCHESTER and JOHN NUVEEN & CO.,
Appellees.

Appeals from the Appellate Court of Illinois, First District, and Supreme Court of Illinois.

JURISDICTIONAL STATEMENT

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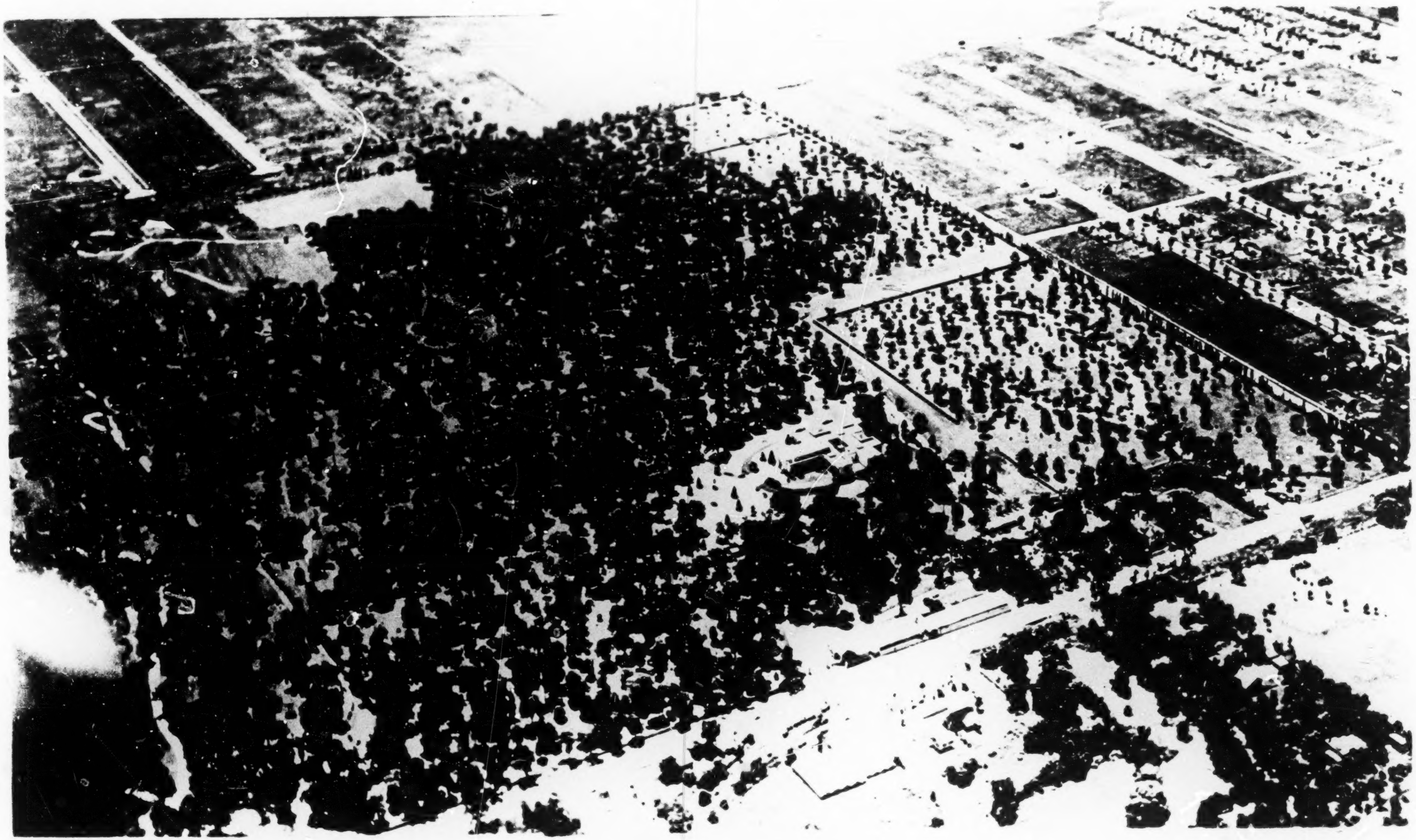


Beautiful Oakridge

Supreme Court of the United States

October Term, A. D. 1958.

ODD FELLOWS OAKRIDGE CEMETERY ASSOCIATION; PALM — I WILL LODGE NO. 58; PIPEFITTERS ASSOCIATION LOCAL UNION 597 — U. A.; VERNA UPELL ALBRIGHT; STANLEY C. BATTY and KRISTINE BATTY, his wife; WALTER BATTY; CLARENCE H. BELLMAN; ANNA B. BOLTON and JANE E. PRINZ, sisters; HUGH F. BRENNAN and CARRIE HESER BRENNAN, his wife; HAZEL M. BRIER; MATTHEW BURG; JENNIE CLINE; JACOB A. COOK and FLORA A. COOK, his wife; RUTH EDITH CRAMER; MARY E. CROSS; DU ROY B. DENNHARDT and ANN E. DENNHARDT, his wife; LOLA MAY DEUBEN; MINNIE DRINHAUS; DOROTHEA A. DUNNE; ROBERT H. EHLERS and EDITH A. EHLERS, his wife; EDITH FISCHER; FRANK J. FOLZ and DORA N. FOLZ, his wife; FLORENCE ANDREN FREED; ARLINE GARBER and PHYLLIS KRAMER, sisters; ANNA M. GEISSLER and ERNEST GEISSLER, her son; ROSEL GOLDSCHMIDT; EMILY CRAMER GROSSMAN; JULIUS E. HAEMMERLE and MARGUERITE H. HAEMMERLE, his wife; MARGARET HALLEMAN; MAMIE HAND; ARTHUR L. HENRIKSON and BEATRICE HENRIKSON, his wife; MILDRED HERMAN; ETHEL M. HILL; MARY ASHER HOOVER; WILLIAM J. HOSKINS; ESTELLA A. HURD; HARRIET E. JENKINS; CHRISTINE JURS; REUBEN C. KELBLE; JULIA KLEINSCHMIDT; EDWARD A. KOLSTEDT and ESTHER M. KOLSTEDT, his wife; IDA M. KUEHNLE; ELMER P. LADENDORF and EMMA M. LADENDORF, his wife; LOUISE LITTLE; LUCILLE L. LORENCE; GERTRUDE E. MAHNKE; EDWARD H. MENKE; JULIA T. MICHEL; WILLIAM J. MUNRO and HAZEL MUNRO, his wife; FRED MURPHY and ALMA MURPHY, his wife; MABEL L. NELSON; MAY NEU; SAMUEL F. NORMAN, individually and as Conservator of the Estate and Person of Ralph Reynolds, Incompetent; NICHOLAS OEHMEN and ALICE V. OEHMEN, his wife; EARL J. OVERTON and LUELLA A. OVERTON, his wife; WILLIAM A. PASSOW; MABEL E. PRESSLER; IRMA H. RADTKE; MATTIE SPIECE RAY; LAWRENCE RECKNER; PAUL E. RECKNER and PEARL M. RECKNER, his wife; LINCOLN RODMAN and HAZEL RODMAN, his wife; WILLIAM A. SCHALK; JOHN W. SCHIRMER and ELSIE M. SCHIRMER, his wife; BERTHA M. SMILIE; CLIFFORD P. SMITH and HARRIET E. SMITH, his wife; MILDRED E. SMITH; SHARON SNOW; JAMES STEWART and INA M. STEWART, his wife; EVA L. STUBBE; MARIE C. SURPLUS; ELSIE SWATEK; LAWRENCE J. TAMM and BESSIE M. TAMM, his wife; LOUISE R. TAMM; MAUD THORNTON; JULIA C. WEIGERT; EDWARD WHITE; RUDOLPH C. WILLIAMS and FLORENCE E. WILLIAMS, his wife; ADELINE G. VERBURG; ELAINE WANG; HARRY E. WRIGHT and ANNE I. M. WRIGHT, his wife; and GEORGE ZILBERMAN and BESSIE ZILBERMAN, his wife,

Appellants,

VS.

OAKRIDGE CEMETERY CORPORATION, VILLAGE OF WESTCHESTER and JOHN NUVEEN & CO.,

Appellees.

Appeals from the Appellate Court of Illinois, First District, and Supreme Court of Illinois.

JURISDICTIONAL STATEMENT

The 109 appellants, being 3 charitable or philanthropic organizations and 106 individuals who collectively own or are interested in over 3600 gravesites in Oakridge Cemetery in which more than 1100 of their deceased members, relatives, friends and loved ones are buried, appeal from a judgment entered June 21, 1957 by the Appellate Court of Illinois, First District (Appendix 1)—hereinafter referred to as the "Appellate Court"—affirming a judgment or decree entered June 29, 1956 by the Superior Court of Cook County, Illinois, dismissing for want of equity a complaint to prevent the acquisition by the Village of Westchester of a parcel of land 100 feet square located in and constituting part of Oakridge Cemetery for the erection and operation of a huge commercial water standpipe and pumphouse.

As a precautionary measure, the 109 appellants by separate notice of appeal also appeal from the following three orders or judgments of the Supreme Court of Illinois:

(1) Order entered January 21, 1958 denying appellants' petition for leave to appeal to the Illinois Supreme Court from the Appellate Court judgment of June 21, 1957 (Appendix 1);

(2) Order entered November 21, 1957 dismissing appellants' attempted appeal as of right to the Illinois Supreme Court from the Appellate Court judgment of June 21, 1957 (Appendix 2); and

(3) Order entered November 27, 1956 transferring cause to the Appellate Court (Appendix 2).

Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction and that substantial questions are involved.

As both appeals involve identical or closely related questions, this statement will cover both appeals. (Rule 15, par. 3)

(a) The opinion below.

The Illinois Supreme Court did not render any written opinion in these proceedings. In the Appellate Court certain other proceedings involving a procedural question not involved here were consolidated with these proceedings for hearing. On June 21, 1957 the Appellate Court rendered an opinion in respect of both proceedings (Appendix 3), which opinion is reported in 14 Ill. App. 2d 378 and 144 N. E. 2d 853.

(b) Grounds on which the jurisdiction of this Court is invoked.

(i) Nature of the proceedings.

On September 2, 1955 plaintiffs, Odd Fellows Oakridge Cemetery Association, Palm—I Will Lodge No. 58, Baptist Home and Hospital and Pipefitters Association Local Union 597—U. A., fraternal and charitable organizations who own or are interested in over 500 gravesites in beautiful Oakridge Cemetery in which many of their deceased members, friends and loved ones are buried, filed a complaint in the Superior Court of Cook County, Illinois, to prevent the acquisition by the Village of Westchester—hereinafter referred to as "Westchester"—of a parcel of land 100 feet square—hereinafter referred to as the "subject site"—located in and constituting part of Oakridge Cemetery for the erection and operation of a huge commercial water standpipe and pumphouse in conjunction with its municipally owned and operated water supply and distribution system.

On June 26, 1956 the trial court, after hearing exceptions to the report of the master to whom the cause was referred, entered a judgment or decree dismissing the complaint for want of equity.

During the pendency of the proceedings in the trial court a large number of other owners of gravesites in the Cemetery learned of the plan to construct and operate the huge standpipe and pumphouse in the Cemetery and objected thereto. 106 of them joined with 3 of the 4 original plaintiffs in an appeal to the higher Illinois Courts from the trial court's judgment or decree of June 26, 1956. These 109 appellants originally appealed directly to the Illinois Supreme Court under section 75 (1) of the Illinois Civil Practice Act (2 *Ill. Rev. Stat.* 1957, ch. 110, par. 75) on the theory that a freehold or a construction of the constitution is involved. This appeal was docketed in that Court as no. 34231.

Although the Baptist Home and Hospital, one of the original parties, did not join in that appeal, it filed its appearance in the Illinois Supreme Court and made known that it does not admit the correctness of the trial court's judgment or decree appealed from. A certified copy of that appearance has been filed with the clerk of this Court.

(ii) Orders or judgments sought to be reviewed, rehearings and notices of appeal.

On November 27, 1956 the Illinois Supreme Court without opinion entered an order transferring the cause to the Appellate Court. This is one of the three Illinois Supreme Court orders appellants seek to review by their precautionary appeal.

On June 21, 1957 the Appellate Court entered the judgment affirming the judgment or decree of the trial court. This is the Appellate Court judgment appellants seek to review.

On September 27, 1957 the Appellate Court denied appellants' petition for rehearing.

Thereafter, appellants duly applied to the Appellate Court under section 75 (2) (a) of the Civil Practice Act (2 *Ill. Rev. Stat.* 1957, ch. 110, par. 75) for leave to appeal to the Illinois Supreme Court from the Appellate Court judgment of June 21, 1957. On October 11, 1957 the Appellate Court denied this application.

On November 5, 1957 appellants filed with the clerk of the Appellate Court under section 74 (3) of the Civil Practice Act (2 *Ill. Rev. Stat.* 1957, ch. 110, par. 74) their notice of appeal as of right to the Illinois Supreme Court from the Appellate Court judgment of June 21, 1957, which appeal was docketed in the Illinois Supreme Court as no. 34664. On November 21, 1957 the Illinois Supreme Court entered an order finding that this attempted appeal as of right was not well taken and dismissed the appeal. This is another of the three Illinois Supreme Court orders appellants seek to review by their precautionary appeal.

On November 5, 1957 appellants filed with the Illinois Supreme Court under section 75 (2) (b) of the Civil Practice Act (2 *Ill. Rev. Stat.* 1957, ch. 110, par. 75) their petition for leave to appeal to the Illinois Supreme Court from the Appellate Court judgment of June 21, 1957, which petition for leave to appeal was docketed in the Illinois Supreme Court as no. 34650. On January 21, 1958 the Illinois Supreme Court entered an order denying the petition for leave to appeal. This is another of the three Illinois Supreme Court orders appellants seek to review by their precautionary appeal.

Appellants say that the Appellate Court judgment of June 21, 1957 and the Illinois Supreme Court orders of November 27, 1956 and November 21, 1957 became final for the purposes of these appeals January 21, 1958 when the Illinois Supreme Court denied appellants' petition for leave to appeal from the Appellate Court judgment of June 21, 1957.

The notices of appeal to the Supreme Court of the United States from the Appellate Court judgment of June 21, 1957 and from the three Illinois Supreme Court orders were both filed April 19, 1958 in the office of the clerk of the Illinois Supreme Court as that is the court possessed of the record. (Rule 10, par. 3)

Explanatory statement concerning the records.

Two records have been filed in this Court. They are identical except that the notice of appeal in one record appeals from the Appellate Court judgment of June 21, 1957, while the notice of appeal in the precautionary appeal record appeals from the three Illinois Supreme Court orders above mentioned.

Included in each record is the printed abstract of record of the proceedings in the trial court which was filed in the

Illinois Supreme Court. That abstract of record was prepared in two volumes. Volume 1 contains an abstract of all the trial court record except the exhibits, and an abstract of the Appellate Court record. Volume 2 contains the exhibits. In this statement Volume 1 will be referred to as 1 Abs. and Volume 2 as 2 Abs. The appendix to this statement will be referred to as App.

(iii) Statutory provision conferring jurisdiction.

The statutory provision conferring on this Court jurisdiction of these appeals is 28 U. S. Code section 1257 (2) which reads:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(iv) Cases sustaining the jurisdiction of this Court.

A municipal ordinance or resolution is a "statute" within the meaning of 28 U. S. Code section 1257 (2). *King Mfg. Co.* v. *Augusta* (1928) 277 U. S. 100, 114, 72 L. ed 801, 810; *Lovell* v. *Griffin* (1938) 303 U. S. 448, 450, 82 L. ed 949, 953; *Jamison* v. *Texas* (1943) 318 U. S. 413, 414, 87 L. ed 869, 871.

Where, as here, objection is made to the application or enforcement of a municipal ordinance, resolution or state statute on the ground of its being repugnant to the United States constitution and the state courts overrule such objection and sustain the legislation, this Court has jurisdiction by appeal under 28 U. S. Code section 1257 (2). *Appleby* v. *New York* (1926) 271 U. S. 364, 70 L. ed 992; *Hanover Fire Ins. Co.* v. *Carr* (1926) 272 U. S. 494, 71 L. ed 372; *Lovell* v. *Griffin* (1938) 303 U. S. 443, 82 L. ed 949; *Jamison* v. *Texas* (1943) 318 U. S. 413, 414, 87 L. ed 869, 871; *Illinois* v. *Board of Education* (1948) 333 U. S. 203, 206, 92 L. ed 649, 656; *Michigan-Wisconsin P. L. Co.* v. *Calvert* (1954) 347 U. S. 157, 98 L. ed 584, 585; *Walker* v. *Hutchinson* (1956) 352 U. S. 112, 115, 1 L. ed. 2d 178, 181.

(v) Statutes whose validity is drawn in question.

The validity of the following municipal ordinances, resolution and state statutes is drawn in question on the ground of their being repugnant to the Constitution of the United States:

(1) Ordinance adopted by Westchester February 22, 1955 providing for the acquisition of the subject site in Oakridge Cemetery for the erection and operation of the huge commercial water standpipe and pumphouse in question. (App. 11)

(2) Ordinance adopted by Westchester August 9, 1955 providing for the issuance and sale of $385,000 of water revenue bonds to finance the cost of the acquisition of the subject site, the construction of the standpipe and pumphouse and other items not material here. (App. 12)

(3) Resolution adopted by Westchester September 27, 1955 *pendente lite* providing for the immediate consummation of the acquisition of the subject site. (App. 15)

(4) Sections 1 and 5 of the Illinois General Corporation Act of 1872 as amended in 1879. (App. 17; *Hurd, Illinois Revised Statutes* (1880) ch. 32, pars. 1, 5)

(c) Questions presented by these appeals.

Appellants claim that Oakridge Cemetery compromises approximately 120 acres of land, including the subject site; that they have an interest in the Cemetery as a whole; and that they have valuable contractual and vested rights and interests in the approximately 120 acres of land, including the subject site, comprising Oakridge Cemetery, for the following reasons:

(1) For many years the approximately 120 acres of land, including the subject site, comprising Oakridge Cemetery have been set apart and dedicated to cemetery purposes and appellants and others have valuable contractual

and vested rights and interests in the nature of an easement to have said approximately 120 acres of land, including the subject site, sold or used for burial or cemetery purposes only and preserved as a cemetery;

(2) For many years the approximately 120 acres of land, including the subject site, comprising Oakridge Cemetery have been impressed with a trust for cemetery purposes and appellants and others as *cestuis que trustent* have valuable contractual and vested rights and interests to have said approximately 120 acres of land, including the subject site, sold or used for burial or cemetery purposes only and preserved as a cemetery; and

(3) Appellants and other depositors in the perpetual care trust funds held by Oakridge Cemetery Corporation are the beneficial owners of said funds and of a note and trust deed dated November 26, 1943 and as such beneficial owners have valuable contractual and vested rights and interests in the land covered by said trust deed, including the subject site, in the nature of a lien to secure the payment of the indebtedness evidenced by said note and trust deed.

Although the Westchester ordinances and resolution of February 22, 1955, August 9, 1955 and September 27, 1955 provided for the payment of $17,000 by Westchester to Oakridge Cemetery Corporation in connection with the acquisition of the subject site, all of said $17,000 went to Oakridge Cemetery Corporation and no provision whatsoever is made to compensate appellants for their valuable contractual and vested rights and interests in the subject site, or to compensate appellants for the damages they will sustain by reason of the erection and operation of the huge standpipe and pumphouse in close proximity to the gravesites they own or in which they are interested.

As construed and applied by the Illinois Courts, the Westchester ordinances and resolution of February 22, 1955, August 9, 1955 and September 27, 1955 and the provisions of sections 1 and 5 of the Illinois General Corporation

Act of 1872, whose validity is drawn in question, authorized Westchester to acquire the subject site free and clear of appellants' valuable contractual and vested rights and interests therein without compensating appellants for such contractual and vested rights and interests, and authorize Westchester to erect and operate thereon the huge standpipe and pumphouse without compensating appellants for the damages they will sustain, and in utter disregard of appellants' feelings and religious sensibilities.

The questions presented in these appeals are:

(1) Whether the Westchester ordinances and resolutions of February 22, 1955, August 9, 1955 and September 27, 1955 and the provisions of sections 1 and 5 of the Illinois General Corporation Act of 1872, whose validity is drawn in question, as thus construed and applied by the Illinois Courts are *ex post facto* laws or laws impairing the obligation of appellants' contracts and therefore unconstitutional under section 10 of Article I of the constitution of the United States of America which provides that no state shall pass any *ex post facto* law or law impairing the obligation of contracts; and

(2) Whether the Westchester ordinances and resolution of February 22, 1955, August 9, 1955 and September 27, 1955 and the provisions of sections 1 and 5 of the Illinois Corporation Act of 1872, whose validity is drawn in question, as thus construed and applied by the Illinois courts, prohibit the free exercise by appellants of their religion, or take or damage appellants' property for public use without just compensation, or deprive appellants of liberty or property without due process of law, or deny the appellants the equal protection of the law and therefore unconstitutional under the fourteenth amendment to the constitution of the United States of America which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of liberty or property without due

process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(d) Statement of the case.

Opposite page 1 of this statement there is an aerial photograph of Beautiful Oakridge, being plaintiffs' exhibit 18. (2 Abs. 39) That photograph was taken in 1945 and shows a view from the northeast to the southwest. The southeast portion of Oakridge, in which the subject site is located, appears at the upper left. A portion of Glen Oak Cemetery, which adjoins Oakridge on the east, can be seen at the lower left. Roosevelt Road, which adjoins Oakridge on the north, appears in the foreground. A sepia tone framed enlargement of this photograph, measuring 30 by 40 inches, has hung on the north wall of the Cemetery office for 9 or 10 years. (1 Abs. 231)

Oakridge Cemetery, like every cemetery in the world that is not 100% filled, contains areas in which no burials have yet been made. At App. 18 there is a plat of Oakridge Cemetery showing the shape of the Cemetery, the driveways, the numbers of those sections which have been numbered, the areas designated for single graves, and the areas in which there are no burials. There are areas containing no burials in the extreme northeastern portion of the Cemetery, in the north central portion, in the border of the southwestern portion, and in the southeastern portion. The areas in the southeastern portion of the Cemetery which contain no burials aggregate about 9 acres, and the areas elsewhere in the Cemetery which contain no burials aggregrate about 11 acres, making a total of about 20 acres of the 120 acres comprising the entire Cemetery which contain no burials.

The 100 square feet of land comprising the subject site which Westchester seeks to appropriate for the erection and operation of the huge standpipe and pumphouse in question is on the southern boundary of the Cemetery approximately 100 feet east of section 25 in an area in which there are yet no burials.

It seems to be the theory of the Illinois courts that appellants and other gravesite owners do not have any interest in those areas in Oakridge Cemetery in which no burials have yet been made. Consequently, those portions of the Cemetery can be appropriated and devoted to commercial or other uses inimical or foreign to cemetery purposes and appellants and others similarly situated are without remedy, irrespective of the damage suffered and irrespective of the wounding of their feelings and religious sensibilities.

Thus, the Illinois courts have in effect held that the 20 acres which contain no burials are not a part of Oakridge Cemetery, and that the Cemetery comprises only about 100 acres, instead of approximately 120 acres as has been represented by the Cemetery Corporation and understood by the public for many years.

The startling result reached by the Illinois courts requires an examination by this Court of the facts of this case and of the law pertaining to the rights of owners of gravesites in public cemeteries.

The facts material to the questions presented by these appeals are voluminous. Unfortunately, the Appellate Court's opinion (App. 3) is hopelessly deficient and inadequate, because that opinion not only is factually inaccurate in several respects, but also entirely omits many of the facts necessary to a consideration of the Federal questions involved. It is, therefore, necessary to relate the facts quite in detail.

The facts.

Many of the leading facts are not in dispute. Wherever reference is made to allegations in the complaint in support of facts set forth in this statement, such facts have either been admitted in defendants' pleadings, stipulated before the master, or included in the stipulation of facts. (2 Abs. 15) Matters admitted in the answer of Oakridge Cemetery Corporation are admitted by the other defendants. (1 Abs. 236)

Oakridge Cemetery contains approximately 120 acres of land. Excepting a small area on the northern boundary reserved as a homestead by Louise Boeger, the original owner, the Cemetery forms a perfect rectangle three-eighths of a mile east and west and half of a mile north and south, with straight and uninterrupted boundary lines on the east, south and west, the east and west quarter line of the section being the southern boundary line of the Cemetery. It is in Cook County, Illinois some 13 miles west of the Loop district of Chicago, on the south side of Roosevelt Road, and extends south to the northern boundary of Westchester. (1 Abs. 3)

Oakridge Cemetery was established over half a century ago and is a very beautiful place of sepulture. (1 Abs. 3) It is generally known as "Beautiful Oakridge" and is thus appropriately referred to in the brochures and literature published by the Cemetery itself. (2 Abs. 49, 50, 50a, 66, 68, 71, 72, 81) In addition to its 120 acres for earthen interments, Oakridge is the home of beautiful Oakridge Abbey, a community mausoleum constructed of Georgian marble during the years 1924 to 1928 at a cost of over $1,000,000. In the Abbey there is a beautiful Chapel available to patrons of the Cemetery for religious services and worship. (1 Abs. 226) A large sign at the northeastern corner of the Cemetery facing heavily traveled Roosevelt Road has for 20 years (1 Abs. 236) represented to the public that Oakridge Cemetery and Oakridge Abbey are "Chicagoland's Finest". (2 Abs. 41)

At Oakridge there are areas devoted to family burial lots, containing 4, 6 or 8 gravesites, and there are areas devoted to single gravesites, both large and small. (1 Abs. 248; 2 Abs. 59) The lots and their numbers in the family burial areas appear on some of the plats of the Cemetery. Neither the single graves nor their numbers appear on the maps or plats of the Cemetery, but the single grave areas are designated as "Large Single Graves" or "Small Single Graves" as the case may be.

In 1924 Oakridge Cemetery Corporation caused a map or plat to be made of Oakridge Cemetery which appears at 2 Abs. 32. That plat represents the Cemetery as being an area containing approximately 120 acres of land, rectangular in shape, with straight and uninterrupted boundary lines on the east, south and west, the east and west quarter line of section 20 being the southern boundary line of the Cemetery. That plat shows that by 1924 approximately one half of the 120 acres had been laid out into family burial lots, a small area, known as section 17, had been designated for "Small Single Graves," the area east of section 3 and the area in the southeastern portion of the Cemetery, which includes the subject site, had been designated for "Large Single Graves," and a small area in the extreme northeast corner of the Cemetery and a substantial area of about 30 acres in the northwest portion of the Cemetery had not been laid out into family burial lots, or designated for single grave sites.

Since 1924 a portion of division D shown on the 1924 plat has been occupied by beautiful Oakridge Abbey. In 1929 the Cemetery Corporation laid out the area south of section 12 between sections 16 and 17 into family burial lots and is known as section 16A (1 Abs. 224) and constructed a permanent driveway bordering the south edge of this section connecting with the other driveways in the Cemetery. (2 Abs. 126) In 1929 the Cemetery Corporation laid out a portion of the northwest 20 acres into family burial lots known as the Jewish section 35. (1 Abs. 224) The east part of the southeastern portion of the Cemetery designated "Large Single Graves" has become known as single grave sections 26 and 26A. In 1945 the Cemetery Corporation constructed a permanent hard surfaced driveway in this area running southeast from the southeast corner of section 18 and then north to the southwest corner of section 17. (1 Abs. 223) A number of areas in different parts of the Cemetery have never been laid out as family burial lots nor designated as single grave areas, such as original section 1 in the northeast corner of the Cemetery, section 8, that portion of division D not occupied by Oakridge Abbey, and substantial areas to the south and to the east of Jewish section 35. (1 Abs. 236)

For almost half a century the southeastern portion of the Cemetery, including the subject site, has been enclosed with and as a part of the rest of the Cemetery with fences, hedges, shrubbery and different kinds of bushes and a row of Lombardy poplar trees. These enclosures along the southern boundary of the Cemetery always ran in a straight and uninterrupted line from the southwest corner of the Cemetery to the southeast corner of the Cemetery along the east and west quarter line of section 20. (1 Abs. 226, 227, 231, 237, 242, 299, 300; 2 Abs. 36, 46)

Since 1903 Oakridge Cemetery has been operated by Oakridge Cemetery Corporation and its corporate predecessor, Oakridge Cemetery of Chicago, both single purpose corporations organized to acquire, maintain and operate "a cemetery". (1 Abs. 10, 11, 12)

Since 1916 purchasers of gravesites in Oakridge Cemetery have been required to deposit in trust with the Cemetery Corporation funds for perpetual care. (1 Abs. 254) Owners desiring to transfer gravesites not under perpetual care are required to deposit in trust with the Cemetery Corporation funds sufficient to place such gravesites under perpetual care. (2 Abs. 58) Currently, such deposits amount to about $12.50 per gravesite. (1 Abs. 253) These funds have been referred to as Perpetual Lawn Care and Full Perpetual Care (2 Abs. 60) and more recently as General Trust Fund Care. (2 Abs. 55, 56) These deposits constitute trust funds to be held by Oakridge Cemetery Corporation in trust forever and the net income used to care for the gravesites in respect of which the deposits are made and such Cemetery appurtenances as are for the use and benefit of such gravesites. (2 Abs. 55, 61) This perpetual care trust fund now amounts to over $1,000,000 and the income therefrom amounts to over $40,000 per year. (2 Abs. 19) The Cemetery Corporation represents to the public that when the Cemetery is completely sold the perpetual care trust fund will be approximately $3,000,000. (2 Abs. 69)

Pursuant to the requirements of the cemetery care act of 1947 (1 *Ill. Rev. Stat.* 1955, ch. 21, par. 64.1 *et seq.*) Oakridge Cemetery Corporation applied for and on June 22, 1948 was issued a license authorizing the Corporation to accept funds and property and to hold the same in trust in perpetuity for the care of its "cemetery" or for the care of gravesites etc. as set forth in section 3 of the act. (1 Abs. 275)

Since 1907 owners of gravesites not under perpetual care have been required to contribute each year to the Annual Care Fund, the net proceeds of which are used to maintain the gravesites in respect of which the contributions are made and the Cemetery as a whole. (2 Abs. 60)

Appellants have made deposits of substantial sums with Oakridge Cemetery Corporation in the perpetual care trust fund to be held in trust in perpetuity, the income to be used for the care of their gravesites and the Cemetery as a whole. (1 Abs. 590-610; 2 Abs. 19, 20)

The Cemetery Corporation mowed the southeastern portion of the Cemetery, including the subject site, as often as other sections of the Cemetery where there are graves, and gave the subject site the same care and attention in mowing as the rest of the Cemetery. (1 Abs. 234) Whatever cost or expense the Cemetery Corporation incurred relative to the subject site, it has for many years charged as follows: approximately 25% to the net income from funds deposited with the Cemetery Corporation for Perpetual Lawn Care, Full Perpetual Care and General Trust Fund Care, and the remainder to funds paid to the Cemetery Corporation constituting the Annual Care Fund. (2 Abs. 19)

Section 3 of article 9 of the Illinois constitution provides that property used exclusively for

> "religious, cemetery and charitable purposes"

may be exempt from taxation. At least since 1853 (*Laws,* 1853 p. 35; *Ill. Rev. Stat.* 1874 ch. 120, par. 2; 2 *Ill. Rev. Stat.* 1955 ch. 120, par. 500) the Illinois General Assembly has exempted from taxation

> "All lands used exclusively as graveyards or grounds for burying the dead."

For more than half a century the owners of Oakridge Cemetery have made the necessary applications and representations to the tax officials to cause such officials to exempt the approximately 120 acres comprising Oakridge Cemetery from general real estate taxes as follows: The 1-acre tract in the northeast corner of the Cemetery, since 1898; the east 80 acres of the Cemetery, including the subject site, since 1900; the southwest 20 acres of the Cemetery, since 1906; and the northwest 20 acres of the Cemetery, since 1926. (2 Abs. 15)

In 1922 the People brought an action against Oakridge Cemetery Corporation in the circuit court of Cook County to recover capital stock taxes for the year 1920. For the purpose of defeating that tax, the Cemetery Corporation contended that its real estate was exempt from taxation and called one William F. Boeger, its secretary, as a witness, who testified under oath that in 1920 the entire property owned by the Cemetery Corporation "consisted of 118 acres of land in Cook County, Illinois, which land was used exclusively for cemetery purposes." (2 Abs. 14)

November 26, 1943 Oakridge Cemetery Corporation, as mortgagor, and Harris Trust and Savings Bank, as trustee, executed a trust deed in the nature of a mortgage (2 Abs. 115) whereby Oakridge Cemetery Corporation conveyed to the trustee the approximately 120 acres constituting Oakridge Cemetery including the subject site, (excepting only the land used in connection with Oakridge Abbey) to secure the payment of an indebtedness of $146,000, evidenced by an installment note of Oakridge Cemetery Corporation. Paragraph 13 of the trust deed provides that the trustee shall release the trust deed upon full payment of the amounts secured thereby, and paragraph 16 provides that the trustee shall release the trust deed with respect to

> "individual lot or lots sold by the mortgagor in the ordinary course of business provided fifty per cent (50%) of the net proceeds received by the mortgagor on account of such sale or sales shall be paid on account of the principal indebtedness secured hereby."

This note and trust deed now constitute, and since on or about November 26, 1943 have constituted, a part of the corpus of the $1,000,000 perpetual care trust fund held by Oakridge Cemetery Corporation, said note and trust deed having been placed in said trust fund on or about November 26, 1943 at a cost to said trust fund of $146,000. The balance remaining unpaid on the note and trust deed is $91,000. (2 Abs. 20)

On November 30, 1943 the trust deed of November 26, 1943 was recorded in the recorder's office in Cook County, Illinois, (1 Abs. 21) and since then has constituted at least an implied representation to the public that the subject site is part and parcel of Oakridge Cemetery and would be sold, if at all, only in "individual lot or lots * * * in the ordinary course of business."

Prior to 1924 Oakridge Cemetery Corporation issued a brochure (1 Abs. 240; 2 Abs. 66, 67) inviting public attention to the "beautiful rural Cemetery OAKRIDGE" "far from the noise and turmoil of the great city, in one of nature's most beautiful spots." The brochure represented to the public:

> "From the time of the dedication of Oakridge as a cemetery, the management has followed the one general policy—viz: to preserve and add to its natural beauty so as to make it ultimately the most beautiful of Chicago's cemeteries."
>
> "We have * * * established a Perpetual Care Fund * * * to guard against uncared for and unsightly lots."

In 1925 Oakridge Cemetery Corporation issued another brochure (1 Abs. 265; 2 Abs. 81) in which it represented to the public:

> "Magnificence of natural scenery attracted the founders of OAKRIDGE to select this site twenty-six years ago, and to this they have added nobility of the builders' art in the gateway, the administrative building, and in the conservatory, where bloom thousands of flowers, rare, common, native, exotic.
>
> "Knowledge that OAKRIDGE CEMETERY lies just far enough from the city to prevent its ever being disturbed by the crowding life of a metropolis, as might happen were it any nearer, has prompted the erection of OAKRIDGE ABBEY in the heart of the Cemetery, where it will stand as the ideal creation of its kind in America.
>
> "Both Cemetery and Abbey have been planned with the care and tenderness that men give the things they intend shall last forever. The Cemetery has, and the Abbey will have, the constant attention of men who regard these institutions with reverence and profound respect, qualities that the world requires of those to whom it entrusts its loved ones for 'the last long rest'."

In 1928 or 1929 Oakridge Cemetery Corporation issued another brochure entitled "Beautiful Oakridge" (1 Abs. 238; 2 Abs. 50) in which it represented to the public:

> "The Arrangement of Lots at Oakridge embodies the most advanced and improved plans of landscape development. Parklike beauty is permanently assured by this arrangement and by the uniform restriction of the height of headstones as well as by level graves and by a private walk to each lot."

We particularly call the Court's attention to the green on white diagrammatic representation of Oakridge Cemetery appearing at the lower right portion of the page of this brochure at 2 Abs. 50a, showing the Cemetery as located on the south side of Roosevelt Road west of Mannheim Road, as being rectangular in shape, and as having straight and uninterrupted boundary lines on the east, south and west, the east, south and part of the west boundary lines being indicated by heavy black lines. The green color on the diagram (which covers all the cemetery except the Jewish section 35 in the northwest part) represents that Oakridge Cemetery extends south to the straight and uninterrupted southern boundary line and unquestionably includes the subject site.

In 1932 or 1933 Oakridge Cemetery Corporation issued another brochure entitled "Beautiful Oakridge—Its Place in Your Family Problems," (1 Abs. 241; 2 Abs. 68-71) in which it represented to the public:

> "Oakridge has an abundance of splendid trees, beautiful shrubbery and a profusion of lovely flowers. It is a place of beauty and dignity. * * * As to permanency of foundation and environment Oakridge offers complete assurance."
>
> "Oakridge is not new, for it already has the associations and traditions of thirty years' watchful care over those who are at rest within its borders. * * * Improvements are constantly being made and values are steadily increasing."
>
> "When Oakridge is entirely sold out, and when all lots may be fully occupied, your plot will still be perpetually kept in good condition. To see a neglected burial ground is always a distressing sight, and invariably brings thoughts of regret even though we are not personally interested. In Oakridge this can never happen, because the Perpetual Care Fund, (when the Cemetery is completely sold, this fund will be approximately three million dollars) is under the management and control of the Chicago Title and Trust Company."
>
> "Oakridge Cemetery—of approximately 120 acres—is divided into two independent operating units."
>
> "The magnificent chapel in Oakridge Abbey—a million dollar mausoleum — is available to Oakridge owners at a nominal charge. Many lot owners are availing themselves of this privilege."
>
> "It is the earnest intention of the Corporation that Oakridge shall always be everything that could be desired in a Cemetery."
>
> "We encourage the purchase of our property only by citizens who are financially responsible and highly respected in their community—those who appreciate beauty and will do their part in supporting the high standard of maintenance and service which we have laid down."

> "Property is sold only to those who agree to place it under Full Perpetual Care."

In 1950 Oakridge Cemetery Corporation issued another brochure (1 Abs. 241; 2 Abs. 72, 73) in which it represented to the public:

> "In making a selection of memorial property for you and your family it is wise to consider several fundamentals—namely: permanence, beauty, location and management."
>
> "Oakridge has fifty years of traditional watchful care to its credit. * * * You are positively assured, therefore, that your family memorial will be a place of beauty forever."
>
> "At Oakridge Nature abounds in all her glory. * * * Truly, Oakridge is a place of dignity and spiritual beauty."
>
> "The management of Oakridge is comprised of men of integrity and proven ability. They have had years of experience in this specialized field. Investigation will disclose the fine reputation and character of this non-sectarian institution which is backed by fifty years of sincere and dependable service to the public."
>
> "Oakridge's 120 acres is divided into thirty sections, each rivaling the other in beauty. In one of them there is an ideal memorial for you and your family."
>
> "There is a section dedicated to the Odd Fellows Fraternity which is also beautified by a splendid memorial shaft towering skyward."

The president of Oakridge Cemetery Corporation represented to prospective purchasers, and assured them, that the subject site and surrounding area were part and parcel of Oakridge Cemetery. (1 Abs. 209, 214, 216) The subject site and surrounding area were included and designated as unsold gravesites, or unsold cemetery lots and graves, in inventories made by Oakridge Cemetery Corporation and in its balance sheets prepared by certified public accountants. (1 Abs. 214; 2 Abs. 20) The southeastern portion of the Cemetery is drained by 8-inch and 12-inch tiles which form part of the drainage system for the entire Cemetery. (1 Abs. 224; 2 Abs. 36)

Pursuant to a uniform plan of development of Beautiful

Oakridge (1 Abs. 16, 57) the owners have sold almost 78,000 gravesites to the public. (1 Abs. 103) The average sales price is about $80 (2 Abs. 126), at which figure the 78,000 gravesites owned by the public aggregate over $6,000,000. More than 34,000 deceased persons have been buried in Oakridge at the cost to the public of additional millions. Some 20,000 monuments and headstones, some 10,000 grave markers, 7 family mausoleums and other memorials have been erected in the Cemetery at the cost to the public of still additional millions. (1 Abs. 16, 57)

The owners of Oakridge have conveyed the numerous gravesites to the public by deeds, forms of which appear at 1 Abs. 16 and 2 Abs. 54 and 56, as places of interment, to the grantees, their heirs and assigns forever, subject to the rules and regulations of the Cemetery Corporation then or thereafter in force, which rules and regulations are made a part of such deeds. Many of these deeds have from time to time been filed, recorded and made a matter of public record in the office of the recorder of deeds of Cook County, Illinois. (1 Abs. 357)

The elaborate rules and regulations promulgated by the Cemetery Corporation to which the rights of gravesite owners are made subject, and which may be changed by the Corporation without notice (2 Abs. 57-65), recite that they are made for the benefit of the "whole body of lot owners," for "the benefit and protection of the Cemetery as a whole." (2 Abs. 57, 61) "The condition and appearance of Oakridge Cemetery is a matter of interest and personal pride to the great majority of our lot owners." (2 Abs. 60) "Trees and shrubs are planted in accordance with a general plan." (2 Abs. 61) "The Corporation appreciates the cooperation of their patrons in their efforts to enhance the beauty of OAKRIDGE and to provide for the continued care and maintenance of the Cemetery for all time." (2 Abs. 65)

By the rules and regulations, the Cemetery Corporation declares: "Where a lot has been buried upon, the Cemetery

Corporation holds that it has thereby become sacred ground" and calls itself the "guardian of the dead." (2 Abs. 58, 60) The Cemetery Corporation makes provision for owners to transfer burial lots to the Corporation in trust to insure against possible removal of remains after death, which lots then become a "sacred trust in the hands of the Cemetery forever" (2 Abs. 58); and those desiring to do so, may deposit a sufficient sum with the Corporation in trust for Perpetual Flower Planting. (2 Abs. 61)

To insure the everlasting beauty of the Cemetery, the Cemetery Corporation, by its rules and regulations ordains that there shall be no raising or mounding of the graves—the graves shall be kept level with the ground, for in this way only can a uniform appearance be secured; that there shall be no vases, urns, monuments or markers other than standard solid granite (2 Abs. 62, 63); specifies the location on the burial lots where monuments, headstones and markers may be placed and specifies the height and other dimensions which must not be exceeded (2 Abs. 63); prohibits the erection of any vault, mausoleum or columbarium unless the owner deposits with the Cemetery Corporation a sum sufficient for the proper care of the structure in perpetuity (2 Abs. 64); and requires the owners of gravesites to contribute to the annual or perpetual care trust funds to insure the proper care of the graves and the Cemetery as a whole forever. (2 Abs. 60)

To these ends, the Cemetery Corporation "upon whom rests the responsibility for the general condition, appearance and upkeep of the property" (2 Abs. 61) reserves to itself important powers—trust, fiduciary and discretionary—including the power to give or withhold its consent to the transfer of burial lots by the owners thereof (2 Abs. 58); to grant or withhold permission to plant trees and shrubbery (2 Abs. 61); to remove from burial lots trees and shrubs that are detrimental, unsightly or inconvenient; to put any unsightly burial lot in proper order or repair, make a reasonable charge for the same, and prohibit interments until the amount has been paid (2 Abs. 61); to give or withhold its approval of stone work and designs, materials and locations for monuments, markers, etc. (2 Abs. 62); to make exceptions to its rules and regulations in favor of designs which it considers exceptionally artistic or otherwise valuable (2 Abs. 63); to grant or withhold its approval of the design, plans, specifications and position on the lot of mausoleums; to grant or withhold its approval of work done in the construction of vaults or tombs or the erection of monuments etc.; if any mausoleum, sarcophagus, vault or similar structure on any lot shall be determined by the Corporation to be offensive or detrimental to appearance of surrounding graves, to cause the same to be removed and the bodies, if any, therein to be interred in the earth upon said lot at the lot owner's expense; if any monument, effigy or enclosure, or any structure, inscription or other thing placed upon any burial lot shall be determined by the Corporation to be offensive, improper or injurious to the appearance of that lot or of the surrounding lots or ground, to remove the offensive or improper object or objects at the lot owner's expense; to alter avenues and walks (2 Abs. 64); to direct and control all funeral processions while within the grounds (2 Abs. 65); and to make rules and regulations for the government of the grounds as the Corporation may deem requisite and proper to secure and promote the general objects and best interests of the Cemetery. (2 Abs. 64)

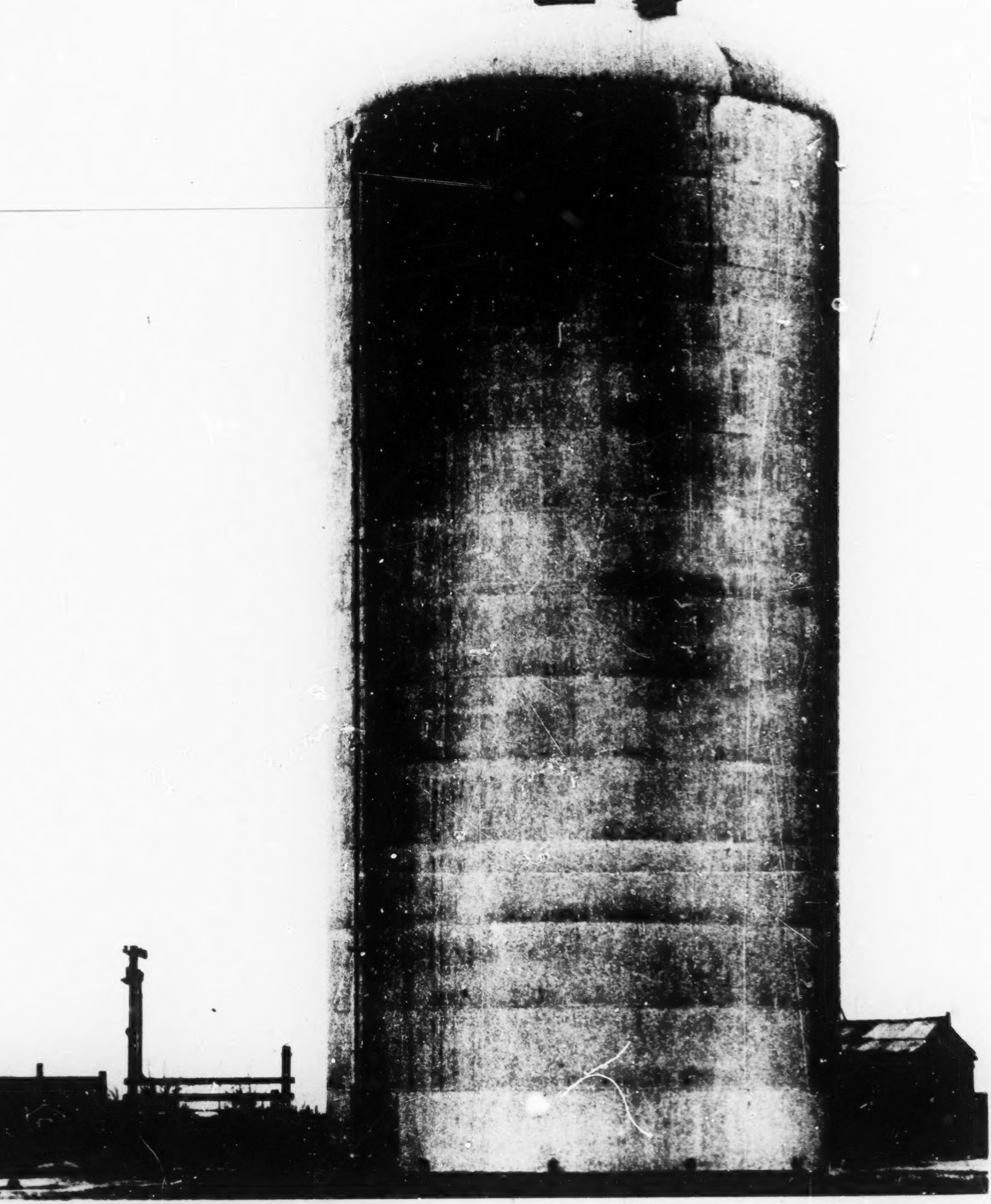
The proposed standpipe will be made of steel, will be cylindrical in shape, 52 feet in diameter, over 106 feet high above the foundation—exceeding in height most 10-story buildings—will have a 10-inch overflow pipe emptying upon a concrete spillway at ground level, will have a capacity of 1,500,000 gallons of water. It will rest upon a 30-inch concrete foundation under which will be 150 concrete piles aggregating 2800 lineal feet in length driven to a depth of 15 to 18 feet by a pile driver. (1 Abs. 500) Plans of this monster are shown at 2 Abs. 78

Following this page is a reproduction of the standpipe shown in defendants' exhibit F (2 Abs. 135) which is practically a duplicate of the standpipe involved here. (1 Abs. 527)

The proposed pumphouse will be approximately 23 feet square, will house two pumps, each having a pumping capacity of 3,000,000 gallons per day, and will house an electric motor to drive one of the pumps and a gasoline engine to drive the other. (1 Abs. 8)

The Independent Order of Odd Fellows, Grand Lodge of Illinois, was chartered in 1838 by the Sovereign Grand Lodge. The Grand Lodge of Illinois issues charters to subordinate Odd Fellows lodges and to Rebekah lodges, the ladies auxiliary. (1 Abs. 258) There are about 30,000 Odd Fellows and 45,000 Rebekahs in Illinois, and 400 subordinate Odd Fellows lodges and 500 Rebekah lodges in Illinois. There are about 9,000 Odd Fellows and 5,000 Rebekahs in the Chicagoland area. (1 Abs. 259) The Odd Fellows lodges are fraternal organizations, whose four cardinal principles are to visit the sick, relieve the distressed, bury the dead and educate the orphan. (1 Abs. 259) The Odd Fellows maintain cemeteries throughout the State of Illinois in which gravesites are available to the general public as well as to members. These cemeteries are operated on a non-profit basis. (1 Abs. 259) Where the family of the deceased so desires, the Odd Fellows will conduct the funeral services and provide the gravesites. (1 Abs. 259)

Appellant, Odd Fellows Oakridge Cemetery Association, is a non-profit corporation organized in 1909 for the purpose of erecting a monument in Oakridge Cemetery in memory of deceased Odd Fellows and conducting memorial services. (2 Abs. 74) Its members consist of subordinate Odd Fellows lodges and Rebekah lodges. (1 Abs. 260) In 1909 the Association acquired from Oakridge Cemetery of Chicago 8 lots in section 16, Oakridge Cemetery. The deed of conveyance provided that the Association should within 5



years erect an Odd Fellows monument upon the lots, and should make specified payments into the care fund; that the lots should be used as a place for the erection and maintenance of an Odd Fellows monument, for conducting memorial services and for the planting of flowers, subject to the rules and regulations of Oakridge Cemetery. The cornerstone was laid September 3, 1914 and the monument completed at a cost of over $3,000. This memorial may be seen in its setting at 2 Abs. 102 and 133. Section 16 in Oakridge Cemetery is known as the Odd Fellows section. It contains over 3200 gravesites, most of which are owned by Odd Fellows lodges, by members or by their families or friends, and almost 1000 deceased Odd Fellows, members of their families or friends are buried there. (1 Abs. 234, 555)

For years appellant, Odd Fellows Oakridge Cemetery Association, has sponsored and conducted in June of each year religious and memorial services at the foot of the Odd Fellows monument in section 16 in honor and memory of deceased Odd Fellows, their families and friends. About 200 attended the ceremony held June 12, 1955. (1 Abs. 260) The nature and character of these annual memorial services appear at 2 Abs. 75 and 76.

Appellant, Palm—I Will Lodge No. 58 is an Odd Fellows lodge chartered by the Grand Lodge of Illinois. (1 Abs. 258) It owns 8 burial lots in section 16, Oakridge Cemetery, containing 64 gravesites (1 Abs. 31) in which 21 deceased members, relatives or friends are buried. (2 Abs. 20)

Plaintiff, Baptist Home and Hospital is a non-profit corporation organized in 1907 and owns and maintains a modern and well equipped home and small hospital for aged people in Maywood, Illinois. In order to live in the Home, applicants must be 70 years of age or over. They are asked to disclose and turn over to the Home their assets, whatever they may be. However, applicants with no money are also accepted. (1 Abs. 315) The Home provides complete care for over 160 aged people, furnishing meals, clothing, dental work, glasses, medical and hospital care. It has its own Chapel for religious worship. (1 Abs. 312) For applicants who have not provided for their last resting place, the Home undertakes to furnish suitable graves in a nice location and appropriate burial services. (1 Abs. 313, 314) For this purpose the Home acquired and owns some 296 gravesites in Oakridge Cemetery, most of them in section 25 (1 Abs. 31) in which some 128 deceased members of the Home are buried and upon whose graves a number of markers or headstones have been placed. (1 Abs. 87, 317)

Appellant, Pipefitters Association Local Union 597—U. A. is an unincorporated labor organization having approximately 8,000 members in the local and 250,000 or more members in the International. (1 Abs. 273) This organization owns 2 lots in section 25 and 8 lots in section 13, Oakridge Cemetery, containing 80 gravesites (1 Abs. 32) in which 35 deceased members are buried. (2 Abs. 20)

The 106 individual appellants collectively own or are interested in some 531 gravesites in Oakridge Cemetery, in which some 168 of their fathers, mothers, brothers, sisters, sons, daughters and other relatives, friends and loved ones are buried. A number of these graves and gravesites are in sections 18, 19 and 25, adjoining the subject site, upon which numerous costly monuments, headstones and markers have been placed in honor and in memory of the departed. (1 Abs. 590-610).

On February 22, 1955 Westchester passed the ordinance for the acquisition of the subject site. (App. 11) This ordinance recites that in order to pay for the subject site and for the proposed standpipe and pumphouse, water revenue bonds must be issued by Westchester; that Westchester has selected the subject site *"in Oakridge Cemetery"*; and that Oakridge Cemetery Corporation has offered to sell the subject site to Westchester for $17,000 under an agreement and escrow arrangement with Chicago Title and Trust

Company whereby Westchester would get immediate title, subject to defeasance if the proposed water revenue bonds were not issued within 18 months. The ordinance authorizes and directs the Westchester officials to proceed to do whatever is required to carry out the arrangement.

Pursuant to the Westchester ordinance of February 22, 1955, on or about April 6, 1955, and prior to the issuance of the proposed water revenue bonds by Westchester, Oakridge Cemetery Corporation deposited in the escrow, among other things, a warranty deed dated April 6, 1955 conveying the subject site to Westchester and a release deed dated April 5, 1955 releasing the subject site from the lien of the trust deed of November 26, 1943; and Westchester deposited in said escrow $17,000, temporarily advanced from its general funds pending the sale of the proposed water revenue bonds, and a quitclaim deed of reconveyance which would reconvey the subject site to Oakridge Cemetery Corporation if the proposed water revenue bonds were not sold within the 18-month period.

In order to obtain the customary preliminary report on title from the Chicago Title and Trust Company showing record title to the subject site in Westchester, the warranty deed and release deed deposited in escrow were recorded.

Thus the matter stood until August 9, 1955, on which date Westchester adopted the ordinance providing for the issuance and sale of $385,000 of water revenue bonds to pay for the subject site, the standpipe and pumphouse, and other items not material here. (App. 12) This ordinance was published August 14, 1955 (2 Abs. 17) and is referred to in the complaint filed in the trial court as the ordinance of August 14, 1955. (1 Abs. 7, 8, 32)

In this posture, and before any of the proposed water revenue bonds were issued and sold, on September 2, 1955 the complaint was filed in the trial court and all defendants, including Westchester and Oakridge Cemetery Corporation, were served with process by September 7, 1955. (1 Abs. 2, 34)

Stages in the proceedings and manner in which the Federal questions were raised.

The complaint, after setting forth the facts in detail, charges, among other things, that the approximately 120 acres of land, including the subject site, comprising Oakridge Cemetery, have long since been dedicated to cemetery purposes, are subject to a trust for such purposes, and have become sacred and hallowed ground (1 Abs. 26); that by reason thereof plaintiffs acquired and have vested rights and interest in Oakridge Cemetery, including the subject site, in the nature of an easement to have said land sold or used for burial or cemetery purposes only (1 Abs. 27, 28); that the acquisition of the subject site by Westchester and the construction of the proposed standpipe and pumphouse thereon will constitute a substantial and material violation of the vested rights and interests of plaintiffs as beneficiaries of the note and trust deed of November 26, 1943, and of their vested rights and interests in Oakridge Cemetery, including the subject site, in the nature of an easement to have said land sold or used for burial or cemetery purposes only, will cause plaintiffs substantial and irreparable injury and damages, will result in taking and damaging the plaintiffs' property for public use without compensation, will deprive plaintiffs of liberty and property without due process of law, and will deny the plaintiffs the equal protection of the law, in contravention of the fourteenth amendment to the constitution of the United States (1 Abs. 28, 29); and that, for these reasons, the Westchester ordinances of February 22, 1955 and August 9, 1955 are unconstitutional and void (1 Abs. 8) and should be so adjudged by the Court. (1 Abs. 32)

The complaint asked that the acquisition of the subject site and the construction of the standpipe and pumphouse thereon by Westchester be enjoined and that title to the subject site be reconveyed to Oakridge Cemetery Corporation. (1 Abs. 23, 24)

Notwithstanding the filing of the complaint and the acquisition by the trial court of jurisdiction of the parties and of the subject matter for the purpose, among others, of adjudicating the legality and constitutionality of the acquisition of the subject site by Westchester, Westchester on September 27, 1955 adopted the resolution authorizing and the directing the Westchester officials immediately to close out the escrow, and to consummate the acquisition of the subject site. (App. 15) Pursuant thereto, on or about October 4, 1955 the $17,000 deposited in the escrow was paid over to Oakridge Cemetery Corporation, the warranty deed dated April 6, 1955 and release deed dated April 5, 1955 deposited in the escrow were delivered to Westchester, and the quitclaim deed of reconveyance deposited in the escrow was cancelled. (2 Abs. 19)

Westchester claims and the Illinois courts have held that Westchester thus acquired the subject site free and clear of all the valuable contractual and vested rights and interests therein of appellants, and can proceed to construct and operate the huge standpipe and pumphouse thereon, without compensating appellants for their valuable contractual and vested rights and interests, without compensating appellants for the damages they will sustain by reason of the erection and operation of the huge standpipe and pumphouse in close proximity to the gravesites they own or in which they are interested—all in disregard of appellants' feelings and religious sensibilities.

In their objections to the master's report plaintiffs alleged that the master should have found, concluded and recommended that any amendment to the articles of incorporation of Oakridge Cemetery Corporation, or any ordinance or resolution of Westchester, or any statute of the state of Illinois, which would take away, extinguish or adversely affect the vested rights and interests of the plaintiffs and others in Oakridge Cemetery, including the subject site, will result in taking and damaging the property of plaintiffs and others for public use without just compensation, will deprive plaintiffs and others of liberty and property without due process of law, will deny plaintiffs and others the equal protection of the law, will impair the obligation of contracts of the plaintiffs and others, and will constitute *ex post facto* legislation, in contravention of section 10 of article I of and the fourteenth amendment to the constitution of the United States, and that, for these reasons, the Westchester ordinances and resolution of February 22, 1955, August 9, 1955 and September 27, 1955 are unconstitutional and void. (1 Abs. 196, 197) These objections to the master's report were ordered to stand as exceptions before the trial court. (1 Abs. 73) The trial court considered all constitutional objections raised under the Federal constitution in the pleadings and in the exceptions to the master's report and overruled such objections. (1 Abs. 582)

In their notice of appeal from the trial court to the Illinois Supreme Court (1 Abs. 610, 611) and under point 15, page 73, of their brief filed in the Illinois Supreme Court, a certified copy of which is filed with the clerk of this Court, appellants persisted in their contention that the Westchester ordinances and resolution of February 22, 1955, August 9, 1955 and September 27, 1955, and any statute of the state of Illinois, if construed or applied so as to authorize the acquisition of the subject site by Westchester and the erection and operation thereon of the standpipe and pumphouse in question in violation of appellants liberties and contractual and vested rights and interests would be repugnant to section 10 of article I of and the fourteenth amendment to the constitution of the United States.

THE QUESTIONS ARE SUBSTANTIAL

1

No necessity is shown for the appropriation by Westchester of a part of Oakridge Cemetery as a site for the construction and operation of the standpipe and pumphouse in question.

It is alleged in the complaint, and not denied by Westchester, that the subject site is not the only site available to Westchester for the erection of the proposed standpipe and pumphouse. There is no evidence in the record that the subject site was ever recommended by Westchester's engineers. Indeed, those engineers have recommended at least three other suitable sites in Westchester. (1 Abs. 478, 479, 495, 496, 498) Plaintiffs offered to prove by a well qualified civil engineer of 35 years experience who is familiar with the Westchester water distribution system (1 Abs. 200, 201) that there are various other sites in Westchester which, from an engineering standpoint, are even more desirable than the subject site in Oakridge Cemetery for the purpose of the proposed standpipe and pumphouse. (1 Abs. 543)

2

Appellants have an interest in Oakridge Cemetery as a whole.

In *Close* v. *Glenwood Cemetery* (1883) 107 U. S. 466, 27 L. ed 408 it appears that 90 acres of land were acquired for a cemetery. 30 acres were enclosed with a high fence, laid out in drives and embellished, and the remaining 60 acres were left in their original condition. Some 20 years later the question arose as to whether the 60 acres was part of the cemetery. In holding that it was, this Court said at page 477:

> "It is argued by the learned counsel for the appellants that the estoppel and the obligation of Close cannot extend beyond the thirty acres which had been actually laid out. This argument appears to us to be fully met and answered in the able and thorough opinion of the court below, delivered by *Mr. Justice* Cox who says: 'It was held out to the lot holders, not only that the ground immediately available for burial should remain set apart for that object, but that the Cemetery should

> be forever under the protection of a perpetual corporation, charged with the duty of laying out and ornamenting the grounds, capable of receiving gifts and bequests, and empowered to make by-laws for the regulation of the affairs of the Corporation; and the whole property was described as dedicated to the purposes of the Cemetery, not necessarily that the whole should be laid out into lots, but that it should all belong to the Institution and be available for its general objects. This was not to be a mere graveyard in which each lot holder acquired a piece of ground in which to bury his dead, and at the same time become chargeable with the sole care of his particular lot; but the lot holders themselves became subject to by-laws and regulations having reference to the institution as an entirety, and the perpetual preservation of the Cemetery as an ornamental and convenient place for internment and for resort by the relatives of the dead.' "

In *Chew* v. *First Presbyterian Church of Wilmington* (1916, D. C. Del.) 237 Fed. 219 the Court said at page 240:

> "The several owners and holders of lots in a cemetery have a common interest in its decent and proper maintenance as a whole. * * * For, while each owner or holder is directly and immediately interested in the lot controlled by him, he is at the same time interested that its surroundings shall be those appropriate to a well ordered resting place for the ashes of the dead, and not converted into a waste place or a dumping ground for refuse matter or the accumulation of debris, or into a site for the erection of buildings foreign to the pious or charitable use to which the land has been dedicated and devoted. There is an implied contract to this effect between those owning or controlling the cemetery and those acquiring the ownership or possession of burial lots therein."

In *Clark* v. *Rahway Cemetery* (1905) 69 N. J. Eq. 636, 61 A. 261 the Court said at page 640:

> "It would seem plain that under the joint operation of the certificate of incorporation, of the by-laws, and of the deed itself, the purchaser is not the isolated owner of a fee simple absolute of a lot over which he has entire control as such, but a person who has acquired a limited interest in a plot which is part of one connected whole; that whole being conducted, maintained, and managed by trustees for the benefit of him-

> self and of those similarly situated. His interest is in some degree that of a beneficiary of a trust, and I cannot imagine why he should not have the right to complain if that is being violated to his prejudice. Here the direct tendency of the acts complained of is to imperil the lots remaining undisposed of, to depreciate the value of the cemetery lots as a whole, to prevent needed improvements, and to render access to complainant's lot more difficult."

In *Oakland Cemetery Company* v. *Peoples Cemetery Association* (1900) 93 Tex. 569, 57 S. W. 27 the Court said at page 575:

> "Each lot-owner has in view that the cemetery ground as a whole shall be improved and ornamented so as to make it a pleasant place of resort for the friends and relatives of the deceased persons who may be buried there, as well as a place for interment of the dead."

In the much cited case of *Hertle* v. *Riddell* (1907) 127 Ky. 623, 106 S. W. 282 the Court said at page 638:

> "The appellant not only has the right to the actual use of his lot for the purpose for which it was sold to him, but he has also in common with all the other lot owners the right to have the cemetery maintained as a whole for the purposes for which it was dedicated * * *"

In the recent case of *Arlington Cemetery Corporation* v. *Bindig* (1956) 212 Ga. 698, 95 S. E. 2d 378 the Supreme Court of Georgia said at page 704:

> "Lot owners, however, have an interest in the preservation of the cemetery in its entirety, and it is not necessary that all of the lands of a cemetery corporation be laid out in lots for lot owners to have an interest in the preservation of the entire lands for cemetery purposes. *Close* v. *Glenwood Cemetery*, 107 U. S. 466, 477, 2 S. Ct. 267, 27 L. Ed. 408."

3

In public cemeteries such as Oakridge the rights and interests of the owners of gravesites outweigh the rights and interests of the promoters or shareholders.

In *Close* v. *Glenwood Cemetery* (1883) 107 U. S. 466, 27 L. ed 408 this Court sustained an act of Congress, passed after the cemetery had been in operation for some 20 years, changing control of the Cemetery Corporation from the shareholders to the gravesite owners, and reducing the participation of the shareholders to ¼ of the gross receipts from the sale of lots, and providing that the other ¾ should be devoted to the improvement of the cemetery. This Court pointed out that there, as here, the land of the Cemetery Corporation was exempt from taxation, the Cemetery Corporation had power to receive funds for ornamenting and improving the cemetery, and concluded that it was not intended to create a mere land company for the benefit of the stockholders, but that (p. 474):

> "* * * the ultimate and principal object was to establish and permanently maintain a Cemetery for the burial of the dead, which, if not a strictly charitable use, is in some aspects a pious and public use * * *. But as fast as lots were sold, the property and interest of those purchasing and holding the land for its ultimate use of the permanent burial of the dead would increase, and the interest of the original associates would diminish. * * * When the lots were all sold, the pecuniary interest of the associates or shareholders would disappear; but the duty to keep up the Cemetery would remain, and the owners of lots would be the only persons having a peculiar interest in keeping it up. The Corporation, in short, was established to secure and maintain, not merely the right of sale, but the right of burial and was the representative, not only of the original proprietors of the land, but also of the subsequent purchasers of lots therein. * * * But with the gradual change of interest, resulting from the sale of lots, it was in full accord with the provisions of the charter, and best tended to carry out the main purpose of permanently maintaining a Cemetery for the burial of the dead, that the holders of lots should take part in the election and so have a voice in the management.
>
> "After the Cemetery had been laid out, improved and used for the burial of the dead for more than twenty years, and two thousand burial lots had been sold, it was a reasonable exercise of the reserved power of Congress to authorize the owners in good faith of lots upon which burials had been made, to elect a majority of the trustees, in whom should be vested the control and management of the Cemetery, with a due

> regard to the equitable rights of all persons having any vested interest therein; and to provide that a portion only of the receipts arising from the future sale of lots should be paid to the original proprietors, and the rest be devoted to the improvement and maintenance of the Cemetery."

Oakridge Cemetery is over half a century old and for many years the rights and interests of the gravesite owners have outweighed those of the shareholders. The public have purchased almost 78,000 gravesites in the Cemetery at a cost of over $6,000,000 (1 Abs. 103; 2 Abs. 126); they have buried more than 34,000 deceased persons at the cost of additional millions of dollars; they have erected some 20,000 monuments and headstones, some 10,000 grave markers, 7 family mausoleums and other memorials at the cost of still additional millions (1 Abs. 16, 57), and they have deposited over $1,000,000 with the Cemetery Corporation in trust for perpetual care. On the other hand, it appears from the record that in November 1953 the present management acquired 78½% of the stock in Oakridge Cemetery Corporation for $357,000. (1 Abs. 431) At this price, all the stock in the Cemetery Corporation is worth about $445,000. Obviously, the rights and interests of the public who have invested several millions of dollars in the Cemetery greatly outweigh the rights and interests of the shareholders.

4

For appellants and others Oakridge Cemetery is a place of religious worship and the appropriation of part of the Cemetery by Westchester for the construction and operation of the huge standpipe and pumphouse will unconstitutionally interfere with the free exercise by appellants of their religion.

"Places of burial for the dead have been held in great reverence from the earliest biblical times." (*Brown* v. *Hill* (1918) 284 Ill. 286, 292) "When a plot of ground is set apart for cemetery purposes, and burials are made in the land, the ground changes its character in the minds and feelings of the community. 'It assumes a sacred quality that overrides conveyancers' precedents' * * * There is a sentiment deeply seated in the human heart that a cemetery or 'sleeping place' of the dead, is sacred ground." (*Humphreys* v. *Bennett Oil Corporation* (1940) 195 La. 531, 551, 197 So. 222) "'Cemeteries are almost universally regarded as a class of property by themselves, * * * our people generally, as do people in all civilized states, regard the burying places of the dead as sacred or hallowed ground.'" (*Beth Medrosh Hagodol Cemetery Association* v. *City of Aurora* (1952) 126 Colo. 267, 275, 248 P. 2d 732) "The burial place of the dead has among all nations and in all times been deemed sacred, and our Anglo-Saxon forefathers called it 'God's Acre.' It is protected by stringent laws from violation, and its willful desecration is universally regarded as exceptionally wicked." (*Hertle* v. *Riddell* (1907) 127 Ky. 623, 637, 106 S. W. 282) "Common sentiment in every community regards the resting place of the dead a sacred spot. It is God's acre. Our feelings are shocked when there is any desecration in a cemetery." (*St. Peter's Evangelical Lutheran Church* v. *Bean* (1906) 15 Pa. Dist. Rep. 636, 639) "All but a very few regard land dedicated to the burial of the dead as hallowed ground." (*Newell* v. *Cleveland Cemetery Association* (1938) 61 Ohio App. 476, 493, 22 N. E. 2d 847; affirmed (1939) 135 Ohio St. 657, 22 N. E. 2d 414. See also *County Board of Commissioners for Clarendon County* v. *Holladay* (1937) 182 S. C. 510, 519, 189 S. E. 885; *Memphis State Line Railroad Company* v. *Forest Hill Cemetery Co.* (1906) 116 Tenn. 400, 423, 94 S. W. 69) "Indubitably, the usual and ordinary rules of real property law are modified once land is devoted to cemetery purposes. * * * For various reasons (Jackson, Cadavers, pp. 180, 185) the setting apart of land as a cemetery tends to make it sacrosanct. That concept has modified the usual rules of property law and is the thing the law seeks to protect." *Abrams* v. *Lakewood Park Cemetery Association* (1946) 355 Mo. 313, 325, 196 S. W. 2d 278.

This Court has long been committed to the doctrine that land used for cemetery purposes is devoted to a public, pious and charitable use. (*Beatty* v. *Kurtz* (1829) 2 Peters (U. S.) 566, 583, 7 L. ed 521, 581; *Close* v. *Glenwood Cemetery* (1883) 107 U. S. 466, 474, 27 L. ed 408, 411) The same doctrine is held by other courts, including Illinois. *People* v. *Rosehill Cemetery Company* (1939) 371 Ill. 510, 513; *Catholic Bishop of Chicago* v. *Murr* (1954) 3 Ill. 2d 107, 109; *Chew* v. *First Presbyterian Church of Wilmington* (1916, D. C. Del.) 237 Fed. 219, 232; *Wolford* v. *Crystal Lake Cemetery Association* (1893) 54 Minn. 440, 445; *Moore* v. *Fairview Mausoleum Company* (1956) 39 N. J. Super. 309, 314, 120 A. 2d 875) Decent burial, appropriate marking of graves and the upkeep of burial grounds are parts of a single system in which modern civilized society is interested from the point of view of health, the preservation of family history, and the cultivation of the finer human sentiments. *Stubblefield* v. *Peoples Bank of Bloomington* (1950) 406 Ill. 374, 386.

Attractiveness and beauty are important attributes of a cemetery. There is where burial services are performed, which, by immemorial usage, are a recognized part of the religious services of the Christian church. (*Stubblefield* v. *Peoples Bank of Bloomington* (1950) 406 Ill. 374, 386) "The several owners and holders of lots in a cemetery have a common interest in its decent and proper maintenance as a whole." (*Chew* v. *First Presbyterian Church of Wilmington* (1916, D. C. Del.) 237 Fed. 219, 240) "A cemetery is not only a place where the dead may be buried, but one in which the living may express their affection and respect of the dead by marking and decorating the place of interment and beautifying its surroundings." (*Wetherby* v. *City of Jackson* (1933) 264 Mich. 146, 150, 249 N. W. 484) The owners of gravesites are interested in the "perpetual preservation of the Cemetery as an ornamental and convenient place for interment and for resort by the relatives of the dead." (*Close* v. *Glenwood Cemetery* (1883) 107 U. S. 466, 478, 27 L. ed 408)

In 1945 the Illinois General Assembly appointed a Commission to make a study of the cemetery laws of Illinois. (*Laws*, 1945, p. 104) This Commission made a report in June 1947, portions of which may be found at page 8 of appendix to appellants' reply brief filed in the Illinois Supreme Court, a certified copy of whi[illegible]s filed with the Clerk of this Court. That Commission stated, among other things:

> "From antiquity to the present, death and interments have been accompanied with some form of ceremonial or rites, in many ways and many forms, from simple burial to burials of great pomp and ceremony.
>
> Uncivilized people have resorted to great and sometimes peculiar festive practices . . . Chinese, according to their ancient customs, have held parades and celebrations of great magnitude, and, in keeping with desired custom have the bones of the deceased returned to their cherished homeland . . . Old Testament evidence relates the preference of Jews to be buried amongst their own people . . . Christians from early times have preferred to bury together, privately, in peaceful quiet places of inspiration, where one may stand, or kneel, or walk in reverent devotion and meditate; religious people have in fondest love and respect escorted their deceased to a final resting place with the singing of psalms, and with humble hearts and exhortation committed the remains to a peaceful rest.
>
> The traditional burial consists of . . . the religious rites at the Church, chapel, or home . . . the escorting of the remains to the cemetery . . . and the committal rites at the place of burial.
>
> The task of burial is not only an act of humanity, but an observance of religious conviction, or one's beliefs and practices; whatever they may be, all are to be honored and respected."

In *In re St. Bernard & St. Lawrence Cemetery Ass'n* (1889) 58 Conn. 91, 19 A. 514 the Court said at page 95 that among all denominations

> "* * * funeral rites have been interwoven with, and sanctified by, the ceremonies of religion, and the tomb has been esteemed sacred, and guarded with pious care.

> There is nothing to which the human mind clings with more tenacity than to its religious beliefs, and there is nothing which men resent with more fiery zeal than any interference with such beliefs."

The right to use a place for religious worship or other religious activities is an element of religious freedom, and in protecting that right the courts are enforcing the right of religious freedom. *Ashworth* v. *Brown* (1940) 240 Ala. 164, 166, 258, 198 So. 135.

For appellants and many others Oakridge Cemetery is a place of deep sentiment and of religious worship. That is where the last prayer is said "over his uncovered grave." And that is where the survivors want to return in "peaceful quiet places of inspiration" and "stand, or kneel, or walk in reverent devotion and meditate." If Westchester can appropriate and use a portion of the Cemetery for the huge standpipe and pumphouse involved in these proceedings, it or some other authority can appropriate and use other portions of the Cemetery for incinerators, garbage disposals, sewage treatment plants, noisy factories, and other uses foreign and offensive to cemetery purposes.

This Court would not hesitate to strike down a municipal ordinance or statute appropriating space in a church or house of worship for a purpose foreign and offensive to the congregation's religious beliefs. What Westchester proposes here is just as bad.

The ordinances, resolution and state statutes authorizing Westchester to appropriate and use part of Oakridge Cemetery for the standpipe and pumphouse are invalid as being repugnant to the first and fourteenth amendments to the constitution of the United States which guarantee to appellants the free exercise of religion. *Cantwell* v. *Connecticut* (1940) 310 U. S. 296, 84 L. ed 1213; *Kedroff* v. *Saint Nicholas Cathedral* (1952) 344 U. S. 94, 97 L. ed 120; *Fowler* v. *Rhode Island* (1953) 345 U. S. 67, 97 L. ed 828.

5

Appellants have valuable contractual and vested rights and interests in the approximately 120 acres of land, including the subject site, comprising Oakridge Cemetery because said land has for many years been set apart and dedicated to cemetery purposes under the principles of common law dedication.

"A cemetery is a place or area of ground set apart for the burial of the dead. A cemetery is not created by the use of the tract of land for the burial of the dead, but what creates the cemetery is the act of setting the ground apart for the burial of the dead, marking it and distinguishing it from the adjoining ground as a place of burial." (*Village of Villa Park* v. *Wanderer's Rest Cemetery Company* (1925) 316 Ill. 226, 228) "It is well settled in the United States, that cemeteries are among the purposes, for which land may be dedicated; and it is held that, upon such dedication, the owner is precluded from exercising his former rights over the land. (5 Am. & Eng. Ency. of Law,—2d ed.—p. 784, and cases referred to in notes). * * * It is also well settled, that no particular form or ceremony is necessary to dedicate land for the purposes of a cemetery. All that need be shown to constitute such dedication is the assent of the owner, and the fact that the land is used for the public purposes, intended by the appropriation. Staking off ground as a cemetery and allowing burials therein amounts to a dedication. An express setting apart of land for such a purpose by the owner may constitute a dedication of the land as a burial ground or cemetery. (5 Am. & Eng. Ency. of Law,—2d ed.—p. 784; 9 id. p. 28; *Hagaman* v. *Dittmar,* 24 Kan. 42; *Hayes* v. *Houke,* 45 id. 466). It has been held that the notorious use of property for twenty years for burial purposes with the acquiescence of the owner affords presumptive evidence of its dedication for such purposes. *Boyce* v. *Kalbaugh,* 47 Md. 334." *Wormley* v. *Wormley* (1904) 207 Ill. 411, 415; *Smith* v. *Ladage* (1947) 397 Ill. 336, 339.

In *Cincinnati* v. *Lessee of White* (1832) 6 Peters (U. S.) 431, 8 L. ed 453, this Court said at page 440:

> "There is no particular form or ceremony necessary in the dedication of land to public use. All that is required is the assent of the owner of the land, and the fact of its being used for the public purposes intended by the appropriation."

And in *Morgan* v. *Chicago and Alton Railroad Co.* (1878) 96 U. S. 716, 24 L. ed 743, where Illinois law was involved, this Court at page 723 quoted from an Illinois case as follows:

> "* * * dedications have been made in every conceivable way by which the intention of the dedicator could be evinced."

And on the same page, this Court said:

> "The law considers the owner's acts and declarations as in the nature of an estoppel in pais and precludes him from revoking the dedication."

Maps, plats, brochures, representations and conduct of the owner will be construed most strongly against him and in favor of the public. The law will not allow the owner to "affect ambiguous expressions" and then permit him to put his own construction upon them. "This the plainest dictates of common honesty forbid." *City of Alton* v. *Illinois Transportation Company* (1850) 12 Ill. 37, 58; *City of Chicago* v. *Hogberg* (1905) 217 Ill. 180, 183; *City of Chicago* v. *Chicago, Burlington and Quincy Railroad Company* (1926) 319 Ill. 351, 358.

Where an owner dedicates land as a park, commons or highway, he in effect relinquishes title and ownership and cannot thereafter sell the land. However, where an owner sets land apart as a cemetery he does not relinquish title. He can thereafter sell gravesites therein. The dedication does not deprive him of that important attribute of ownership. It merely limits the use to cemetery purposes. For this reason, and for the reason that cemeteries are indispensable, the public has an interest in their establishment and they are fostered and encouraged by governments, the courts are not at all reluctant to conclude that land has been set apart as a cemetery. "Obviously the requirements for dedication, though technically the same, will be less rigorously insisted upon when use is for burial than for instance, when it is for purposes of travel." Jackson, *The Law of Cadavers,* (1950, 2d ed) p. 224.

The liberal attitude of the Courts toward the dedication and preservation of land for cemetery purposes has found expression in many cases. In *Village of Hyde Park* v. *Oakwoods Cemetery Association* (1886) 119 Ill. 141 the Cemetery Corporation in 1864 acquired a 160-acre tract, and in 1881 acquired a 21.6-acre tract adjoining the 160-acre tract on the east. The Village claimed the right to condemn the east 33 feet of the 160-acre tract and the west 33 feet of the 21.6-acre tract for highway purposes.

It appears that there were no graves on the line of the proposed street, nor had the land on the line been specially improved for burial purposes, the only improvement being a fence enclosing the lands on the line between the two tracts. Nevertheless, the Court considered this unoccupied and unimproved land to have been set apart and dedicated for cemetery purposes and "devoted to the burial of the dead" (p. 150) and could not be appropriated for highway purposes.

In *Brown* v. *Hill* (1918) 284 Ill. 286 one of the issues was whether a 10-acre tract had been dedicated for cemetery purposes. Notwithstanding only a portion of the 10-acre tract was occupied by graves, the Court concluded that the entire 10 acres had been set apart or dedicated for cemetery purposes and constituted the cemetery.

In *Smith* v. *Ladage* (1947) 397 Ill. 336 it appears that in 1865 one Heaton and wife, being the owners of a quarter section of land, for a consideration of $30 conveyed a square 1-acre tract out of the southwest corner of the quarter section to Compton and Anthony "Trustees of the Brush Creek Burying Ground." Burials were made in the 1-acre tract from 1898 to 1922, but not thereafter.

In 1940 the Ladages acquired title to the quarter section of which the 1-acre tract was a part. In 1943 a resolution was adopted at a town meeting purporting to vacate the cemetery, authorizing a quitclaim deed to the Ladages, and providing for the removal of all bodies buried therein to some other cemetery at the cost of the Ladages. In 1944 proceedings for injunctive relief against desecrating the cemetery and the graves were commenced by three plaintiffs who had relatives buried in the cemetery. The trial court dismissed the complaint, but upon appeal the Illinois Supreme Court reversed, with directions to grant the injunctive relief.

One of the issues was whether the 1-acre tract had been set apart and dedicated as a cemetery. The evidence bearing on this issue, in addition to the burials from 1898 to 1922, but none thereafter, was that the deed of conveyance to Compton and Anthony contained no restrictions on the use of the property other than what might be inferred from the description of the grantees. (p. 339) It did not appear that the tract was ever platted into burial lots. (p. 340) Several gravestones were erected to mark the graves. (p. 339) There was a hedge fence separating the 1-acre tract from the remainder of the quarter section. (p. 339) There was no indication as to what portion of the tract had been buried in and what portion was unoccupied. The tract had been neglected for 20 years. Nevertheless, the Court concluded that the entire 1-acre tract, enclosed with the hedge fence, including that portion in which there were no burials, had been set apart and dedicated as a cemetery, and that it was a public, rather than a private, cemetery. (p. 339)

The Court further held that land dedicated for cemetery purposes can be vacated under statutory authority only when necessary for the public health, safety, comfort or general welfare (p. 345); and that land dedicated for cemetery purposes will not be held to be abandoned unless there is very clear and satisfactory proof of abandonment. (p. 345-347)

In the much cited case of *Close* v. *Glenwood Cemetery* (1883) 107 U. S. 466, 27 L. ed 408 this Court held that all of a 90-acre tract had been set apart and dedicated as a cemetery, notwithstanding the owner enclosed and improved only 30 acres, leaving the other 60 acres in their original condition.

In *Smith* v. *Humbervale Cemetery Company* (1914) 33 Ontario Law Reports 452 the Cemetery Corporation was incorporated in 1893. It acquired 50 acres of land and during the following 20 years sold burial lots in about 6 acres and a number of interments were made therein. By 1912 the unused land became valuable for building operations and a portion was sold to one Winters for that purpose. Plaintiffs—a lot owner and shareholder—brought suit to set aside the sale. The trial court dismissed the action, saying that (p. 455)

> "beyond question, the smaller area is and will be sufficient for the burial during very many years of those whose friends will select this cemetery as a place of interment".

Upon appeal to the Appellate Division of the Supreme Court of Ontario, the decision of the trial court was unanimously reversed. Latchford, J. at page 462:

> "The whole 50 acres, and not merely that part of it in which lots were sold and interments made, constituted 'the cemetery', which the original company was bound to use 'exclusively as a place for the burial of the dead.' "

In *Abrams* v. *Lakewood Park Cemetery Association* (1946) 355 Mo. 313, 196 S. W. 2d 282 and *Abrams* v. *Scott* (1948) 375 Mo. 937, 211 S. W. 2d 710 the Supreme Court of Missouri held that a 200-acre tract of land had been set apart and dedicated for cemetery purposes, although only 30 acres had been laid out into burial lots and there was evidence that the remaining land was not maintained and improved as a cemetery, the proposed driveways were not built, the western two-thirds was fenced off, had grown up in weeds and underbrush and had been rented as a pasture for years, and some of the land had been cultivated by a tenant for years.

Having held that this entire 200-acre tract had been set apart and dedicated for cemetery purposes, the Missouri Supreme Court held that it could not be sold or conveyed for other than cemetery purposes, and that the purchaser at a foreclosure sale of a mortgage on the land would have to take the land subject to such restrictions as to its use.

We respectfully invite this Court's attention to this case, which is a recognized authority and is conclusive in appellants' favor on the issue of common law dedication.

In *Huse* v. *Snodgrass* (1951) 330 Mich. 465, 47 N. W. 2d 696 the township board owned and operated a cemetery. In 1906 it acquired an additional 5 acres adjoining the cemetery on the south. In 1948 the township board passed a resolution to furnish gravel for township road purposes, this gravel to be taken from the 5-acre tract, but the

> "ground to be leveled and graded after removal of gravel."

No burials had been made in the 5-acre tract, and it was still unused and unimproved land. Following the passage of the resolution considerable gravel was removed from the 5-acre tract, leaving an excavation of irregular shape of varying depth. The nearest grave to the excavation was about 100 feet away.

Plaintiffs, owners of burial rights in the cemetery, filed a bill to restrain the removal of gravel, to compel a restoration of the cemetery, and other relief. The trial court issued a temporary restraining order, but after hearing dissolved it and dismissed the bill. Plaintiffs appealed to the Supreme Court of Michigan where the decree was affirmed.

The Supreme Court of Michigan clearly recognized that the 5-acre tract was a part of the cemetery. However, in the Supreme Court the defendants stated in their brief that the excavation had been refilled and the ground levelled and graded. For this reason, and because (p. 470)

> "there is no evidence that the lots of plaintiffs have

> been damaged or the land will have been damaged for cemetery purposes when the resolution is fully carried out"

the Supreme Court affirmed the decree of the lower court. The inference is clear, however, that if the removal of the gravel had either damaged plaintiffs' burial lots, or damaged the cemetery, the Court would have granted the plaintiff lot owners appropriate relief. Chief Justice Reid of the Michigan Supreme Court filed a vigorous dissenting opinion in which he said, at page 476:

> "The actions of defen[illegible] board are against the rights of lot owners in the cemetery as giving the immediate property the appearance of desecration and of dishonor to the dead, and creating unsuitable surroundings for the old cemetery, as well as making the new tract, the 5 acres, entirely non-usable for cemetery purposes. This is a violation of the trust."

In *Memphis State Line Railroad Company* v. *Forest Hill Cemetery Co.* (1906) 116 Tenn. 400, 90 So. 69 the Cemetery Corporation owned 180 acres of land. Burials had been made in about 36 acres. The Railroad Company commenced proceedings to condemn a strip of land through an unused portion of the cemetery for right-of-way purposes, which was covered with wild growths. The Supreme Court of Tennessee held the entire 180 acres had been dedicated to cemetery purposes and that no part thereof could be appropriated or used for railroad right-of-way purposes.

In *County Board of Commissioners for Clarendon County* v. *Holladay* (1936) 182 S. C. 510, 185 S. E. 885 the Zero Church owned 9 acres devoted to cemetery purposes. It adjoined a highway, which the County proposed to widen, which would require taking a small strip off the 9-acre tract. The jury found that no grave was located on the strip sought to be taken; and there was evidence to the effect that it was used only for hitching horses and parking vehicles: that there were no graves within 50 feet of the strip; and that the remaining land would always be adequate for burial purposes. Nevertheless, the Supreme Court of South

Carolina held the strip sought to be taken was dedicated to cemetery purposes, was part of the cemetery, and could not be appropriated or used for highway purposes.

In *Beth Medrosh Hagodol Cemetery Association* v. *City of Aurora* (1952) 126 Colo. 267, 248 P. 2d 732 the Cemetery Corporation owned a tract of land used for cemetery purposes, a portion of which was unused and contained no burials. The City of Aurora proceeded to condemn a part of the unused and unoccupied land for the purpose of erecting thereon a water tower for the emergent needs of the City. The Supreme Court of Colorado held that the unused and unoccupied land was dedicated and constituted a part of the cemetery and could not be appropriated and used for the purpose of erecting thereon the municipal water tower.

We respectfully invite this Court's attention to the opinion of the Supreme Court of Colorado, not only because the case involved an attempt to appropriate and use unoccupied and unused cemetery land for a municipal water tank, but also because of the application of the rule requiring a showing that the particular property involved was the only available property suitable for such purpose.

In the recent case of *Arlington Cemetery Corporation* v. *A. E. Bindig* (1956) 212 Ga. 698, 95 S. E. 2d 378 the Supreme Court of Georgia, reversing the trial court, held that a 100-acre tract which had never been improved or used for burial or cemetery purposes, which adjoined approximately 21 acres which were used for burial purposes, had been set apart and dedicated for cemetery purposes.

We respectfully invite this Court's attention to the opinion of the Georgia Supreme Court. In addition to holding that the 100-acre tract had been set apart and dedicated for cemetery purposes, the Supreme Court of Georgia recognized the following well settled rule of cemetery law, at page 704:

> "When a tract of land has been dedicated as a cemetery, it is perpetually devoted to the burial of the dead and may not be appropriated to any other purpose."

In *Richmond Hills Memorial Park Ass'n* v. *Richardson* (1936) 275 Mich. 403, 266 N. W. 396 the Supreme Court of Michigan held that a person holding a vendor's lien on land set apart and dedicated for cemetery purposes, while he could foreclose the lien, could not (p. 405)

> "turn the premises or any part thereof to other purposes."

And the Michigan Supreme Court quoted from the opinion of the Supreme Court of Missouri in *United Cemeteries Company* v. *Strother* (1933) 332 Mo. 971, 61 S. W. 2d 907 as follows:

> "When this land was thus dedicated to burial purposes, such a public use was fastened on the same that it became different from other land and was no longer subject to unrestricted sale for commercial purposes. In any sale made this use and identity as a cemetery and home of the dead must be respected and preserved. The purchaser must buy a cemetery with its restrictions and limitations."

The Supreme Court of Michigan further held (p. 405):

> "The restrictions and limitations, so mentioned, * * * are fastened to the land, regardless of the holder of the title."

Factual inaccuracies in the Appellate Court's opinion.

Before summarizing the facts and circumstances which establish that the approximately 120 acres of land, including the subject site, known as Oakridge Cemetery have for many years been set apart and dedicated for cemetery purposes under the principles of common law dedication, we will point out some factual inaccuracies found in the Appellate Court's opinion with respect to the subject site and surrounding area in the Cemetery. The opinion of the Appellate Court states (App. 3):

> "All the land (referring to the approximately 120 acres owned by the Cemetery Corporation), except a parcel of approximately 9 acres, hereinafter called the 'utility tract,' in the southeast corner of the cemetery,

> has been platted for burial purposes, with appropriate driveways and walks affording access to the burial lots and single grave sites."

(1) The 1924 plat of Oakridge Cemetery, plaintiff's exhibit 9 (2 Abs. 32) is the official plat of Oakridge Cemetery as of that date. On this plat the area in section 17 was designated "Small Single Graves" and the area east of section 3 and the area in the southeastern portion of the Cemetery, which includes the subject site, were designated for "Large Single Graves".

(2) The expression "utility tract" was coined by the defendants for the purpose of this lawsuit. Exhibit 4 attached to Westchester's answer (2 Abs. 9) and defendants' exhibit A (2 Abs. 125) are copies of the 1924 plat, plaintiffs' exhibit 9 (2 Abs. 32) doctored up for the purposes of this lawsuit. The legend "utility tract" found on those copies is wholly fictitious. Fred Schuth, who has been with Oakridge Cemetery 42 years and has been general superintendent of the Cemetery since 1925 (1 Abs. 222) admitted on cross-examination that it was not until after this lawsuit was commenced and defendants were in the course of preparing their defense that the expression "utility tract" was conceived and, with other fictitious matter, superimposed upon the copies of the 1924 plat for use in this litigation. Schuth also admitted that he could not remember ever before having noted the legend "utility tract" upon any plat of Oakridge Cemetery. (1 Abs. 250, 251)

It would be far more accurate to say that the defendants are now attempting to convert part of Oakridge Cemetery into a "utility tract" to be used for huge commercial projects.

(3) It is not true, as the Appellate Court's opinion states, that all the land of the Cemetery Corporation, except approximately 9 acres in the southeast corner of the cemetery, has been platted for burial purposes, with appropriate drives and walks affording access to the burial

lots and single grave sites, because there are areas, other than the 9 acres, elsewhere in the Cemetery, containing more than 11 acres, which have never been laid out as family burial lots nor designated as single grave sites and in which no burials have yet been made. (1 Abs. 236) Those other areas are in the extreme northeastern portion of the Cemetery, in the north central portion, in the west central portion and in the border of the southwestern portion and, together with the 9 acres in the southeastern portion, are shown on a plat of Oakridge Cemetery at App. 18, to which we respectfully invite the Court's attention. No burials have been made in any of the shaded areas shown on that plat. The principal difference between the shaded areas in the southeastern portion of the Cemetery, aggregating about 9 acres, and the shaded areas elsewhere in the Cemetery, containing over 11 acres, is that the shaded areas in the southeastern portion of the Cemetery were designated for "Large Single Graves" on the 1924 plat (2 Abs. 32), whereas the shaded areas elsewhere in the Cemetery have never been laid out as family burial lots, nor designated for single grave sites, on any plat of the Cemetery or otherwise.

(4) It is not accurate to say that the 9 acres referred to in the Appellate Court's opinion are in the southeastern "corner" of Oakridge Cemetery, because that corner consists of an area known as section 26 A which was opened to the public in 1950 (1 Abs. 224) and contained 560 burials at the time of the hearing. (1 Abs. 555)

This section and section 26 immediately to the north, which contained 1797 burials at the time of the hearing (1 Abs. 555) are fully occupied from the eastern boundary of the Cemetery westward, but have no fixed or visible boundary lines on the west (1 Abs. 251, 277-279, 363-365) which is readily apparent from plaintiffs' exhibits 63 and 64 (2 Abs. 95, 96) which are photographs taken December 12, 1955 from south to north showing views along the then western extremities of these two sections. (1 Abs. 277,

278) As burials are made in these two sections their mobile western extremities move further west into the 9 acres referred to in the Appellate Court's opinion, thus reducing the size of this now unoccupied area, and in time, of course, would cover the entire 9 acres.

The mobile character of the western extremities of sections 26 and 26 A is indicated by the jagged line on the plat of Oakridge Cemetery at App. 18, to which we again respectfully invite the Court's attention.

The southeastern portion of the Cemetery, which includes the subject site, is thus surrounded by graves and burials in every direction possible—the east, the north and the west—and is bounded on the south by the southern boundary of the Cemetery.

(5) It is inaccurate to create the impression, as does the Appellate Court's opinion, that there are no driveways affording access to the 9 acres referred to, in the southeastern portion of the Cemetery. We again respectfully invite the Court's attention to the plat of Oakridge Cemetery found at App. 18, from which it appears that the 9 acres in question are readily accessible from the driveway along the eastern edge of section 25, from the driveway along the southern and eastern edges of section 18 and from the driveway along the southern edges of sections 16 A and 17. Moreover, in 1944 or 1945 the Cemetery Corporation constructed a hard surfaced crushed stone driveway into the 9-acre area itself, running southeast from section 18 and then north to the southwest corner of section 17, similar in all respects to the driveways in other parts of the Cemetery. (1 Abs. 223) The exact location of this new permanent driveway appears on the plat of Oakridge Cemetery at App. 18.

What, may we ask, was the purpose of constructing this new permanent driveway, similar in all respects to driveways in other parts of the Cemetery, if it was not constructed to afford access to planned or anticipated gravesites in the 9-acre area in which the driveway, itself, was constructed?

(6) The Appellate Court's opinion states (App. 4):

> "A part (of the 9 acres in the southeastern portion of the Cemetery) was used as a sod nursery and a place to store and burn used flowers and grave decorations and to pile leaves and black dirt. The remainder of the tract was planted with grass and kept in a park-like condition."

The patches used as a so-called sod nursery were limited to the area east of section 18 and south of section 16 A, being the area marked "undeveloped" on defendants' exhibit C. (2 Abs. 126) The size and location of the patches from which sod was stripped can be seen in plaintiffs' exhibit 12 (1 Abs. 257; 2 Abs. 35) and in plaintiffs' exhibit 66. (1 Abs. 292; 2 Abs. 98) These patches were small indeed. The spots used to store and burn used flowers and grave decorations and to pile leaves and black dirt were to the south of section 16 A and were also small. (1 Abs. 252, 291, 295) Compared to the 392,000 square feet in the 9 acres, the number of square feet used for all these incidental cemetery purposes was small indeed—probably less than 1%.

The record shows that no part of the area east of section 25 and south of section 18 containing 3 or 4 acres, in which the subject site is located, has ever been used for any of these incidental Cemetery purposes. It, together with perhaps 99% of the remainder of the 9-acre area, has for years been kept clean, planted with grass and in a park-like condition. (1 Abs. 231, 365)

It is established that plaintiffs' exhibit 10 (2 Abs. 33), a photograph taken July, 1955 from west to east from a location in section 25, accurately shows the normal appearance for many years of that portion of Oakridge Cemetery east of section 25, in which the subject site is located. (1 Abs. 214, 215, 243)

It is clear from the authorities that the 9 acres referred to in the Appellate Court's opinion are part and parcel of Oakridge Cemetery and are included in the dedication, notwithstanding the circumstance that no burials have been made therein and that small and insignificant patches have been used for purposes incidental to the operation of the Cemetery, such as procuring sod, burning used flowers or grave decorations, and piling leaves and black dirt.

In *Barclay* v. *Howell's Lessee* (1832) 6 Peters (U. S.) 498, 8 L. ed 477 the question was whether a parcel of land in Pittsburgh between Water Street and the Monongahela river had been dedicated to the public for street purposes. This Court held that neither the fact that portions of the land had never been improved or used for street purposes (p. 505), nor the fact that portions of the land had been used as private property by the city for wharfage purposes (p. 507) would preclude a finding that the entire parcel had been dedicated to the public for street purposes.

With respect to cemeteries, the courts have held the following areas to be part and parcel to the cemetery in question and included in the dedication: unimproved areas containing no burials (*Village of Hyde Park* v. *Oakwoods Cemetery Association* (1886) 119 Ill. 141; *Beth Medrosh Hagodol Cemetery Association* v. *City of Aurora* (1952) 126 Colo. 267, 248 P. 2d 732; *Memphis State Line Railroad Company* v. *Forest Hill Cemetery Co.* (1906) 116 Tenn. 400, 94 S. W. 69); 10 acres covered with brush and small and large oaks (*Trustees of the First Evangelical Church* v. *Walsh* (1870) 57 Ill. 363); 20 acres used for securing sod and let out for farming (*City of Chicago* v. *Rosehill Cemetery Company* (1918) 285 Ill. 567); 60 acres of unimproved land containing no burials (*Close* v. *Glenwood Cemetery* (1883) 107 U. S. 466, 27 L. ed 408); portion of 10 acres used for farming and grazing purposes (*Borough of West Long Branch* v. *Home Building and Realty Company of Long Branch* (1926) 99 N. J. Eq. 738, 133 Atl. 758); 44 of

50 acres containing no burials (*Smith* v. *Humbervale Cemetery Company* (1914) 33 Ontario Law Reports 452); area never cleared of timber and underbrush (*Barker* v. *Hazel-Fain Oil Company* (1920, Tex.) 219 S. W. 874); 170 of 200 acres unimproved, grown up in weeds and underbrush, had been rented as pasture for years, and some had been cultivated by a tenant for years (*Abrams* v. *Lakewood Park Cemetery Association* (1946) 355 Mo. 313, 196 S. W. 2d 282); area used for hitching horses and parking vehicles (*County Board of Commissioners for Clarendon County* v. *Holladay* (1936) 182 S. C. 510, 185 S. E. 885); 32 acres cultivated for corn, potatoes etc. by gratuitous permission of cemetery corporation (*In re Petition of Auditor General* (1940) 294 Mich. 221, 292 N. W. 709); and 5 acres used as gravel pit. *Huse* v. *Snodgrass* (1951) 330 Mich. 465, 47 N. W. 2d 696.

Summary of facts and circumstances showing that the subject site is part and parcel of Oakridge Cemetery and included in the dedication.

The facts and circumstances related commencing at page 12 of this statement show that for more than half a century Oakridge Cemetery Corporation, and its predecessor corporation, in almost "every conceivable way" have evinced an intention, and have represented to the public and purchasers of gravesites, that the subject site is part and parcel of Oakridge Cemetery and included in the dedication. These facts and circumstances may be summarized as follows:

(1) Oakridge Cemetery Corporation, as well as its corporate predecessor, Oakridge Cemetery of Chicago, was a single purpose corporation, organized to acquire, maintain and operate **"a cemetery."** The conveyances to the single purpose cemetery corporation will be regarded to have been made for cemetery purposes the same as though cemetery purposes were expressed in the deeds. *Santa Clara Female Academy* v. *Sullivan* (1886) 116 Ill. 376, 389.

(2) For almost half a century the Cemetery Corporation has from time to time prepared and issued maps, plats and brochures, and has made verbal representations, indicating and representing to the public and purchasers of gravesites that Oakridge Cemetery comprises approximately 120 acres of land, including the subject site, rectangular in shape, with straight and uninterrupted boundary lines on the east, south and west, the east and west quarter line of section 20 being the southern boundary of the Cemetery, and that the beauty of Oakridge would be permanently preserved. These maps, plats, brochures and representations are similar to those in the following cases, in each of which the court held that a common law dedication had been made: (*Close* v. *Glenwood Cemetery* (1883) 107 U. S. 466, 27 L. ed 408; *Abrams* v. *Lakewood Park Cemetery Association* (1946) 355 Mo. 313, 196 S. W. 2d 282; *Oakland Cemetery Company* v. *Peoples Cemetery Association* (1900) 93 Tex. 569, 57 S. W. 27; *Maywood Company* v. *Village of Maywood* (1886) 118 Ill. 61; *City of Chicago* v. *Ward* (1897) 169 Ill. 392; *Village of Riverside* v. *MacLain* (1904) 210 Ill. 308; and *Village of Benld* v. *Dorsey* (1924) 311 Ill. 192.

(3) The elaborate rules and regulations issued by the Cemetery Corporation clearly assume and impliedly represent that the entire 120 acres of land, including the subject site, commonly known as Oakridge Cemetery, are embraced within the dedication and constitute the Cemetery to which they apply.

(4) For almost half a century the Cemetery Corporation has enclosed the southeastern portion of the Cemetery, including the subject site, with and as a part of the rest of the Cemetery with fences, hedges, shrubbery and different kinds of bushes and a row of Lombardy poplar trees, thus indicating and representing to the public and to purchasers of gravesites that the subject site is part and parcel of Oakridge Cemetery and included in the dedication.

(5) For many years the Cemetery Corporation has caused the 120 acres, including the subject site, comprising Oakridge Cemetery to be exempt from real estate taxes. The 9 acres, including the subject site, in the southeastern portion of the Cemetery referred to in the Appellate Court's opinion (Abs. 3) have been thus exempt from taxes for over half a century. This exemption from taxes during all these years was legal only on the assumption that those 9 acres, including the subject site, were part and parcel of Oakridge Cemetery and embraced within the dedication. The exemption from taxes for so many years is strong, if not conclusive, evidence of a common law dedication. *Owen* v. *Village of Brookport* (1904) 208 Ill. 35, 43; *Village of Benld* v. *Dorsey* (1924) 311 Ill. 192, 197; *Close* v. *Glenwood Cemetery* (1883) 107 U. S. 466, 474, 27 L. ed 408; *Borough of West Long Branch* v. *Home Building and Realty Company of Long Branch* (1926) 99 N. J. Eq. 738, 744, 133 Atl. 758.

(6) In 1922 the Cemetery Corporation, for the purpose of obtaining tax exemption, caused its secretary to testify under oath in court proceedings that the entire property owned by the Cemetery Corporation "consisted of 118 acres of land in Cook County, Illinois, which land was used exclusively for cemetery purposes." This testimony could be true and not perjured only if the 9 acres, including the subject site, in the southeastern portion of the Cemetery referred to in the Appellate Court's opinion (App. 3), were part and parcel of Oakridge Cemetery and embraced within the dedication.

(7) For many years the Cemetery Corporation has kept the subject site and surrounding area in grass and in a park-like condition. The Cemetery Corporation mowed the subject site and surrounding area as often as other sections of the Cemetery where there are graves, and gave the subject site the same care and attention in mowing as

the rest of the Cemetery. For many years the Cemetery Corporation has used care funds and income from perpetual care trust funds to pay for the upkeep of the subject site and surrounding area. The use of these trust funds for such purpose was legal only on the assumption that the subject site is part and parcel of Oakridge Cemetery and included in the dedication.

(8) The subject site and surrounding area were included and designated as unsold gravesites, or unsold cemetery lots and graves, in inventories made by the Cemetery Corporation and in its balance sheets prepared by certified public accountants.

(9) The trust deed of November 26, 1943 covering Oakridge Cemetery, including the subject site, described at page 16 of this statement, shows that the Cemetery Corporation recognized that the subject site was part and parcel of Oakridge Cemetery and could be sold only in individual lot or lots in the ordinary course of business.

Relying upon the numerous representations of the Oakridge Cemetery Corporation, made in writing, verbally and by conduct, that Oakridge Cemetery consists of an area of land containing approximately 120 acres, including the subject site, rectangular in shape, three-eighths of a mile east and west and half of a mile north and south, with straight and uninterrupted boundary lines on the east, south and west, the public have purchased over 78,000 gravesites in Oakridge Cemetery at the cost of millions of dollars, they have buried therein more than 34,000 of their dead at the cost of additional millions of dollars, they have erected some 20,000 monuments and headstones, some 10,000 grave markers, 7 family mausoleums and other memorials at the cost of additional millions of dollars, have paid to and deposited with the Cemetery Corporation additional millions for the perpetual care and beautification of their graves and the cemetery as a whole. At this late date, the defendants should not be permitted to stultify themselves by assuming positions which, if true, would prove fraud, evasion of real estate taxes for over half a century, perjury in court proceedings, and misapplication or conversion of care trust funds for various periods of time, extending back for more than half a century. *Illinois Central Railroad Company* v. *Cobb, Christy & Co.* (1872) 64 Ill. 143, 146.

In *Maywood Company* v. *Village of Maywood* (1886) 118 Ill. 61, which involved a common law dedication, the Court said at page 72:

> "The Maywood Company has persuaded over four hundred people to settle in their village and buy lots of them, by holding out, among other inducements, the inducement, that this square should be kept open and used as a public park. The law considers their conduct in the nature of an *estoppel in pais,* which precludes them from revoking their dedication. To do so would be a violation of good faith to the inhabitants of the village. The company holds the legal title as trustee, for the use and benefit of the village and its citizens. It can not be allowed to divert its trust by mortgaging the property. A mortgage of it may lead to a sale and conveyance of it to private individuals, and an appropriation of it by them to such purposes, as they may desire. *City of Jacksonville* v. *Jacksonville Ry. Co.* 67 Ill. 540."

As this Court said in *Morgan* v. *Chicago and Alton Railroad Co.* (1878) 96 U. S. 716, 24 L. ed 743 at page 723 the law considers the acts and declarations of Oakridge Cemetery Corporation "as in the nature of an estoppel in pais and precludes (it) from revoking the dedication."

In contrast with the position it now assumes, Westchester, prior to this litigation, had no difficulty in understanding that Oakridge Cemetery includes the subject site and surrounding area. On sheet 1 of the location map for the 1952 project (2 Abs. 31) prepared by Westchester's engineers and approved by Westchester, the northern boundary of the 20-foot alley is also the southern boundary line of Oakridge Cemetery. The subject site bears the legend "CEMETERY". On sheet 1 of the location map for the 1955 project (2 Abs. 77) also prepared by Westchester's engineers and approved by Westchester, the area of the subject site bears the legend "OAKRIDGE CEMETERY." On the plat of survey made by Westchester's engineers (2 Abs. 8) Westchester describes the subject site as *"lying in Oak Ridge Cemetery"* and the area of the subject site bears the legend "OAKRIDGE CEMETERY." In Westchester's ordinance adopted February 22, 1955 providing for the acquisition of the subject site (App. 11) Westchester describes the subject site as a plot of ground 100 feet square *"in Oakridge Cemetery."* And in the zoning plan accompanying its own zoning ordinance of December 8, 1942, found at page 18 of the appendix to appellants' reply brief filed in the Illinois Supreme Court a certified copy of which is filed with the clerk of this Court, Westchester shows Oakridge Cemetery as being rectangular in shape, containing 120 acres, having straight and uninterrupted boundary lines on the east, south and west, the east and west quarter line of section 20 being the southern boundary line of the Cemetery.

Since the approximately 120 acres of land, including the subject site, comprising Oakridge Cemetery have for many years been set apart and dedicated to cemetery purposes, appellants have valuable contractual and vested rights and interests in said land in the nature of an easement to have said land sold or used for burial or cemetery purposes only and preserved as a cemetery. These rights and interests are property, are freehold interests in land, and are like the rights and interests in the nature of easements of nearby property owners to preserve land for use as a park or other public purpose (*City of Chicago* v. *Ward* (1897) 169 Ill. 392, 412; *Ward* v. *Field Museum* (1909) 241

Ill. 496, 510; *Carstens* v. *City of Wood River* (1928) 248 Ill. App. 495, 497, 332 Ill. 400; *Nichols* v. *City of Rock Island* (1954) 3 Ill. 2d 531, 533); or to preserve light, air or view (*McCormick* v. *Chicago Yacht Club* (1928) 331 Ill. 514; *Michigan Boulevard Building Co.* v. *Chicago Park District* (1952) 412 Ill. 350, 362); or to prevent land from being used for certain types of buildings or other uses in violation of building or use restrictions. *Davis* v. *Huguenor* (1951) 408 Ill. 468, 470.

6

Appellants have valuable contractual and vested rights and interests in the approximately 120 acres of land, including the subject site, comprising Oakridge Cemetery because said land has for many years been impressed with a trust for cemetery purposes.

When land is set apart and dedicated for park, commons, cemetery or other public purpose it becomes impressed with a trust for the purposes of the dedication, and adjoining or nearby property owners have vested rights and interests to prevent the land from being diverted to other uses. *City of Jacksonville* v. *Jacksonville Railway Company* (1873) 67 Ill. 540, 544, 545; *Maywood Company* v. *Village of Maywood* (1886) 118 Ill. 61, 71; *City of Chicago* v. *Ward* (1897) 169 Ill. 392, 415; *Village of Riverside* v. *MacLain* (1904) 210 Ill. 308, 324; *Carstens* v. *City of Wood River* (1928) 332 Ill. 400, 409; *Smith* v. *Humbervale Cemetery Company* (1914) 33 Ontario Law Reports 452, 460.

Since the approximately 120 acres of land, including the subject site, comprising Oakridge Cemetery have been dedicated to cemetery purposes, said land is impressed with a trust for such purposes, and appellants and others as *cestui que trustent* have valuable contractual and vested rights and interests to have said land, including the subject site, sold or used for burial or cemetery purposes only and preserved as a cemetery.

7

Appellants have valuable contractual and vested rights and interests in the approximately 120 acres of land, including the subject site, comprising Oakridge Cemetery by reason of the note and trust deed of November 26, 1943.

The note and trust deed of November 26, 1943, described at page 16 of this statement, are secured by a lien on the land, including the subject site, comprising Oakridge Cemetery. That note and trust deed are assets of the perpetual care trust fund held by Oakridge Cemetery Corporation. Appellants and other depositors in such perpetual care trust fund are the beneficial owners of such fund and of said note and trust deed. As such beneficial owners appellants and others have valuable contractual and vested rights and interests in the land covered by said trust deed, including the subject site, in the nature of a lien to secure the payment of the indebtedness evidenced by said note and trust deed.

8

The appropriation by Westchester of part of Oakridge Cemetery for the construction and operation of the standpipe and pumphouse in question will severely depreciate the value of nearby gravesites which appellants own or in which they are interested.

That substantial damage will result to surrounding property from the construction and operation of a huge standpipe and pumphouse such as are involved here in any community other than commercial or industrial, is so self-evident that the courts take judicial notice of such damage, and issue injunctions without discussion of the damage, as was done in *Baltis* v. *Village of Westchester* (1954) 3 Ill. 2d 388; *Taber* v. *City of Benton Harbor* (1937) 280 Mich. 522, 274 N. W. 324; and *Borough of Rockleigh* v. *Astral Industries, Inc.* (1953) 29 N. J. Super. 154, 102 A. 2d 84. And see *McKinney* v. *City of High Point* (1953) 237 N. C. 66, 76, 74 S. E. 2d 440; *Myers* v. *City of Elmhurst* (1958) 12 Ill. 2d 537, 545, 147 N. E. 2d 300.

Plaintiffs called three experienced and well qualified real estate experts, all of whom testified that the depreciation in value and desirability of surrounding gravesites by reason of the construction and operation of the huge standpipe and pumphouse in Oakridge Cemetery would be severe—as much as 75%. The qualifications and testimony of these experts appear at 1 Abs. 276, 282, 283, 286, 318, 321, 326, 329, 330, 331, 334, 350, 351.

The rulings of the Illinois Courts bring the case within the jurisdiction of the Supreme Court of the United States.

As construed and applied by the Illinois courts the Westchester ordinances and resolution of February 22, 1955 (App. 11), August 9, 1955 (App. 12) and September 27, 1955 (App. 15) and sections 1 and 5 of the Illinois General Corporation Act of 1872 as amended in 1879 (App. 17) authorized Westchester to acquire the subject site free and clear of appellants' valuable contractual and vested rights and interests therein without compensating appellants for such contractual and vested rights and interests and authorize Westchester to erect and operate thereon the huge standpipe and pumphouse without compensating appellants for the damage they will sustain, and in utter disregard of appellants' feelings and religious sensibilities.

As thus construed and applied by the Illinois courts the above-mentioned Westchester ordinances, resolution and state statutes are invalid as being repugnant to section 10 of article I of the constitution of the United States which provides that no state shall pass any *ex post facto* law or law impairing the obligation of contracts, and as being repugnant to the fourteenth amendment to the constitution of the United States which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

This Court therefore has jurisdiction under 28 U. S. Code section 1257 (2).

THE QUESTIONS PRESENTED ARE OF GENERAL IMPORTANCE

The questions here are important not only to appellants and to thousands of other individuals and religious and charitable organizations who own or are interested in gravesites in Oakridge Cemetery, but also to additional millions who own or are interested in gravesites in numerous other cemeteries in Illinois and in the Nation. If what Westchester proposes here is permitted to be done, then any of the other 20 some-odd acres in Oakridge in which there are yet no burials, and similar areas in other cemeteries, can be appropriated and used for most any commercial or industrial purpose, in disregard of the contractual and vested rights and interests of the owners of gravesites, and in utter disregard of their feelings and religious sensibilities.

Those who select a cemetery as the final resting place for themselves and their families are entitled to protection against such invasions of their rights and liberties.

Respectfully submitted,

RAYMOND HARKRIDER, ROBERT B. MOORE
Attorneys for Appellants.

HUGH J. McCARTHY AND JOHN J. ENRIGHT
Attorneys for Pipefitters Association
Local Union 597-U.A., Appellant.

APPELLATE COURT JUDGMENT
OF JUNE 21, 1957

On this day came again the said parties, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree and order appealed from aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error. Therefore, it is considered by the Court that the decree and order appealed from aforesaid, be Affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error.

And it is further considered by the Court that the said Oakridge Cemetery Corp., certain Appellee, recover of and from the said Appellants, its costs by it in this behalf expended, to be taxed, and that it have execution therefor, in which order and judgment Judge James R. Bryant took no part.

ILLINOIS SUPREME COURT ORDER
OF JANUARY 21, 1958

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from the said Petitioners costs by them in this behalf expended, to be taxed, and that they have execution therefor.

ILLINOIS SUPREME COURT ORDER OF NOVEMBER 21, 1957

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellees recover of and from the said appellants costs by them in this behalf expended, to be taxed, and that they have execution therefor.

ILLINOIS SUPREME COURT ORDER OF NOVEMBER 27, 1956

And now, on this day, the Court having diligently examined and inspected the record and proceedings aforesaid as well as the briefs and argument filed herein, and now being fully advised of the premises is of the opinion, find, and adjudge that this case was wrongfully appealed to this Court.

Therefore, it is ordered by the Court that this case be and the same is hereby transferred to the Appellate Court for the First District of the State of Illinois, and the Clerk of this Court is directed to transmit the transcript and files herein with the order of this transfer to the Clerk of said Appellate Court.

And it is further ordered by the Court that the said appellees recover of and from the said appellants costs by them in this behalf expended, to be taxed, and that they have execution therefor.

APPELLATE COURT OPINION

Three of the original plaintiffs and 106 individuals, owners of or interested in burial lots and grave sites in Oakridge Cemetery, owned, operated and maintained by defendant Oakridge Cemetery Corporation, hereafter called The Cemetery, appeal from a decree dismissing for want of equity the complaint of the original plaintiffs to enjoin the erection by defendant Village of Westchester, hereafter called Westchester, of a steel water standpipe and a pumphouse on a parcel of land 100 feet square, hereafter called the "subject site," which The Cemetery had contracted to sell and has conveyed to Westchester, and for other related relief. Forty-three of the individual appellants also appeal from an order denying their petitions to become additional parties plaintiff. These appeals, taken direct to the Supreme court, have been transferred to this court and consolidated here for hearing and disposition. Defendants do not concede the right of the 106 individual appellants to join in this appeal. However, they do not object, as they say that no inconvenience or delay will result from the joinder. We do not pass on the right of these parties to appeal. All appellants are hereafter called plaintiffs.

The Cemetery was organized in February, 1917 as a corporation for profit under the General Corporation Act of 1872, as amended, to "* * own, maintain and operate a cemetery and to acquire by purchase, or otherwise, lands for cemetery purposes, * * * and to dispose of said lands * * * for the purpose of the burial of the dead." It acquired the 118 acre tract on which Oakridge Cemetery is now located. Some of the land was then devoted to cemetery purposes. All the land, except a parcel of approximately 9 acres, hereafter called the "utility tract," in the southeast corner of the cemetery, has been platted for burial purposes, with appropriate driveways and walks affording access to the burial lots and single grave sites. Although there is a dispute as to the use of the utility tract since 1917, it is undisputed that there were no burials in the tract. A part was used as a sod nursery and a place to store and burn used flowers and grave decorations and to pile leaves and black dirt. The remainder of the tract was planted with grass and kept in a park-like condition. There are unsold 31,700 grave sites in platted lots and a large number in single grave sites in sections not platted into lots. Representatives of The Cemetery testify that if sales do not exceed the average of recent years these grave sites will not be disposed of in less than fifty years.

The southern boundary of The Cemetery and the northern boundary of Westchester are contiguous. The subject site extends 100 feet along the boundary line between the defendants and 100 feet north into the utility tract. Its east line is 784 feet west of the east line of The Cemetery and its west line is a little more than 100 feet east of burial grounds of The Cemetery. Westchester owns and operates a municipal water supply and distribution system. The City of Chicago furnishes water to Westchester and the villages of Broadview and LaGrange Park under contracts the material terms of which are stated in *Baltis* v. *Village of Westchester,* 3 Ill. 2d 388. On February 22, 1955, Westchester by ordinance authorized the purchase of the subject site, on which to erect a standpipe and pumphouse. By deed dated April 6, 1955 The Cemetery conveyed the property to Westchester in consideration of $17,000. The deed contained no restrictions on the use of the property by the grantee. Two controlling questions are presented on this appeal. Can The Cemetery legally convey the subject site to Westchester? Is the erection of a standpipe and pumphouse on the subject site permissible under the zoning ordinance of the County of Cook?

Plaintiffs contend that the deed from The Cemetery to Westchester is void; that The Cemetery lacks power to convey land except for burial purposes. They rely on an act of 1895 (Ill. Rev. Stats. 1955, Cemeteries, Chap. 21, par.

29) amending section 1 of "An Act in relation to cemeteries" (Laws of Illinois, 1891, page 86) by striking therefrom the words "not exceeding twenty acres," so that the section as amended reads as follows:

> "That all cemetery associations, or companies incorporated for cemetery purposes, by any general or special law of this State may acquire by purchase, gift or devise, and may hold, own and convey for burial purposes only, so much land as may be necessary for use as a cemetery or burial place for the dead."

The General Corporation Act of 1872 (Ill. Rev. Stats. 1874, page 285) authorized the forming of corporations for profit for any lawful purpose (except banking, insurance, etc., not material here), including "organizations for the purchase and sale of real estate for burial purposes only" (Laws of Illinois, 1879, page 82), with power to "own, possess and enjoy so much real and personal estate as shall be necessary for the transaction of their business," and to "sell and dispose of the same when not required for the uses of the corporation."

The statute of 1891 is a single section, one sentence act, restricting the land which a cemetery corporation might acquire and hold to "not exceeding twenty acres." When this restriction was stricken by the amendment of 1895, because, as plaintiffs say, it "apparently proved too inelastic, at least for cemeteries in the larger metropolitan communities," the statute was identical in effect with the General Corporation Act of 1872, which limited the land, which corporations for cemetery and burial purposes formed thereunder could own and possess, to "so much * * * as shall be necessary for the transaction of their business," and restricted the sale of such land to sales for "burial purposes only."

The restriction on sales of land, in carrying on the business of the corporation, to sales "for burial purposes only" has no connection with the right to sell and dispose of land lawfully acquired but no longer necessary for the corporate business. In selling land for burial purposes only, a cemetery corporation does not transfer title in fee. It grants an easement for burial purposes only. *Brown* v. *Hill,* 284 Ill. 286. In disposing of unneeded lands the corporation divests itself of all title to the land. It acts in compliance with the policy of the state not to permit corporations to own real estate beyond what is necessary for their corporate business. *National Home Bldg. etc. Assn.* v. *Home Savings Bank*, 181 Ill. 35, 42; *Carroll* v. *City of East St. Louis,* 67 Ill. 568. If it does not act, the state may by appropriate action compel it to act.

The act of 1872 expressly authorized corporations, including those for cemetery purposes formed thereunder, to sell and dispose of land not required for the uses of the corporation. The statutes of 1891 and 1895 were silent on this subject. The power given in the act of 1872 existed independent of the statute. In *Gulf Lines etc. R. R.* v. *Golconda Northern Ry.*, 290 Ill. 384, in speaking of the power of a corporation, organized under the act providing for the incorporation of railroad companies, to dispose of land which it could no longer use for corporate purposes, the court said (p. 391):

> "Ownership of land by a corporation carries with it the power of disposition, if such power is not restrained by statute or considerations of public policy. (7 R. C. L. 571.) The Toledo Company during the ten-year period had lawful power and authority to acquire, by purchase, title in fee simple for necessary right of way for its line of railroad. When it failed to complete its road within ten years it ceased to have the right to build it, but it still held title to the land it had purchased and had the right to convey it. (3 Thompson on Corp. secs. 2369, 2807.)"

Corporations are required to dispose of excess land. In *Calumet etc. Dock Co.* v. *Conkling,* 273 Ill. 318, the right of the dock company to sell land not needed for corporate purposes was involved. The company was created by a special act and given power to "purchase, possess and occupy real and personal estate" and to "sell, lease and employ the same in such manner as it shall determine, * * *." The court said (323-324):

> "The express power given by section 1 of the statute creating the corporation to purchase and sell real estate did not confer authority to deal in real estate by buying and selling it. The only real estate the corporation was authorized to acquire was such as was reasonably necessary to enable it to carry out the objects of its creation, which were the construction and operation of a canal, ship yards, docks, warehouses, etc. It is contrary to the public policy of this State to permit a corporation to own land not reasonably necessary to enable it to transact its business, and if it acquires land not necessary for that purpose it is required to dispose of it."

The duty to dispose of unneeded land has not been changed by the General Corporation Act of 1919 or the Business Corporation Act of 1933, except as to corporations formed under the latter act with power to deal in real estate without limitation. (1 Illinois Business Corporation Act, Annotated, Chicago Bar Edition, 1947, page 58; 28 Illinois Law Review, 1934, pages 997, 1002.)

No stockholder of The Cemetery objects to the conveyance to Westchester. The sale was properly authorized by the directors and stockholders, and their action is a determination by them that the subject site is unneeded land. The evidence amply supports defendants' contention that the disposal of the subject site will not interfere with the operation and maintenance of The Cemetery, impair the integrity of The Cemetery as a burial place, or deprive lot and grave owners of reasonable access to their lots and graves.

This conclusion renders unnecessary a determination of defendants' contention that under section 8 of the Business Corporation Act of 1933 (Ill. Rev. Stats. 1955, Chap. 32, par. 157.8), plaintiffs cannot attack the sale to Westchester as an ultra vires act; that by the amendment of the charter of The Cemetery in 1949 to include among its powers the purchase and sale of real estate, The Cemetery was thereafter empowered to deal without restriction with land acquired long before for cemetery purposes.

Under the Cook County zoning ordinance the subject site is in F-District (Farming), in which a "community water works" is a permitted use. Westchester and the villages of Broadview and LaGrange Park are contiguous municipalities within the Sanitary District of Chicago. Westchester and Broadview get their water from the City of Chicago under a contract between that city and Westchester and Broadview jointly. Each village maintains its own water system within its own corporate limits to supply its own consumers. LaGrange Park, and the Hines and Vaughan hospitals, formerly within Broadview, receive their water from the Westchester system under separate contracts with Westchester and Broadview jointly. The proposed standpipe will benefit Broadview and LaGrange Park and the consumers in their respective corporate limits, as well as Westchester and its consumers.

Plaintiffs insist that the water works of a system so extensive is not a "community water works." The word "community" has been used in several state statutes. In *Peo. ex rel. Stout* v. *Drennan*, 307 Ill. 482, where the validity of a community high school district was involved, the court said: "The word 'community' has been defined by this court as a body of people having common rights, privileges or interests, or living in the same place under the same laws and regulations, or having an association of interests or a common character or likeness." See 15 C. J. S. 642—Community. In *Hamilton* v. *Rudeen*, 224 Pac. 92, 112 Ore. 268 (1924), the court defined the word "community" as used in a statute permitting communities to incorporate as municipal corporations for the purpose of supplying their inhabitants with water for domestic purposes. The territory of the proposed corporation was seven miles long and three miles wide. It included rural territory and a small village of three stores, a repair shop, a grange hall and about twenty residences, covering an area about 2,000 feet square. The court said (p. 94):

> "From this it would seem to be the reasonable intent of the statute that the extent, size, or area of the district, or the uses to which the lands embraced therein are or may be applied, are not conclusive upon the right or power of the inhabitants thereof to organize and incorporate such a municipality, and also that the word 'community' as used in the statute was intended to embrace and include all the inhabitants of a district having a community of interest in obtaining for themselves in common a water supply for domestic use, or, what is the same thing, a common necessity of obtaining a water supply for that purpose."

Statutes in which the word "community" is used to refer to utilities serving the inhabitants of more than one municipality, include:

> "Secs. 33.1, 33.1-5, 33.1-8, 33.1-10 of the Cities and Villages Act (Ch. 24, Ill. Rev. Stat.), relating to 'community buildings' serving residents of one or more cities and villages in surrounding areas;
>
> Secs. 152 and 160(a) of Ch. 139, Ill. Rev. Stat., referring to community buildings in townships;
>
> Sec. 34.1, Ch. 16½, Ill. Rev. Stat., relating to 'community banks'."

The water works, of which the proposed standpipe and pumphouse are essential parts, is a "community water works" within the meaning of the word "community" as defined above and employed in the statutes cited and in the zoning ordinance. It serves inhabitants of contiguous villages living in a compact area and having a common interest in obtaining an adequate and uninterrupted supply of water. The Cook County authorities who issued the building permit for the construction of these improvements rightly interpreted the ordinance.

The erection, maintenance and operation of the proposed standpipe and pumphouse on the subject site being a permissible use under the ordinance, there is no ground for enjoining their erection. They are not a nuisance *per se*. The principal objection urged by plaintiffs that the standpipe will be unsightly and out of place adjoining the beautiful and well-kept ground of the cemetery, is not a legal objection.

We cannot without inexcusably extending this opinion answer each point urged by plaintiffs in their exceedingly voluminous briefs. Having concluded that The Cemetery was acting within its corporate powers in selling the subject site as unneeded land, never platted or used as burial ground, and that the erection of the proposed standpipe and pumphouse on the site is permissible under the county zoning ordinance, we have determined the controlling questions presented on appeal adversely to plaintiffs. The dismissal of the complaint for want of equity is affirmed.

The appeal of the 43 individual appellants, who sought to be made additional plaintiffs, is without merit and is now moot. The motion of these plaintiffs was presented by counsel for the original plaintiffs after the hearing before the master had been concluded and the case was pending in the trial court on exceptions to the master's report. These appellants adopted the pleadings of the original plaintiffs, the evidence introduced on their behalf, and all actions of plaintiffs in the case. They assert no new or additional grounds for the relief prayed, and, of course, do not complain of the representation of plaintiffs by counsel. Whatever benefits they might obtain by becoming parties were obtained by their becoming appellants on the appeal. Permitting them to become party-plaintiffs in the trial court rested in the discretion of the trial judge. This discretion was not abused.

The decree and the order appealed from are affirmed.

BURKE, P. J. and FRIEND, J.

DECREE AND ORDER AFFIRMED.

BRYANT, J., TOOK NO PART.

WESTCHESTER ORDINANCE OF FEBRUARY 22, 1955

Be It Ordained By The President and Board of Trustees of The Village of Westchester, Cook County, Illinois:

Section 1: This Board finds:

(a) It is in the interest of this Village that the waterworks system of the Village be improved by the construction of a standpipe for the storage of water, plans for which are now being prepared by engineers employed by the Village.

(b) In order to pay the cost of construction of the standpipe and to acquire a site therefor, bonds payable from the revenue of the water system of this Village must be issued.

(c) This Board has selected as a site for the proposed standpipe, a plot of ground (herein called "the proposed standpipe site") 100 feet square, in Oakridge Cemetery, lying outside the Village limits, immediately north of and adjacent to the north line of George F. Nixon & Co.'s 22nd Street Addition to Westchester, and described as follows:

(Here is set forth the legal description of the subject site.)

(d) Oakridge Cemetery Association, owner of said Cemetery, has offered to sell the proposed standpipe site to this Village for $17,000, pursuant to contract, copy of which is attached and incorporated herein as Exhibit A. Under that contract, the Village will get immediate title to the proposed standpipe site, subject to the escrow agreement set forth in the contract. The escrow agreement provides that if the proposed revenue bonds are not issued within 18 months after the execution of the contract, the Village will reconvey the proposed standpipe site to Oakridge Cemetery Association, and receive back the $17,000 purchase price theretofore deposited in escrow.

(e) It is in the interest of the Village that said offer of Oakridge Cemetery Association be accepted, and that the

contract attached hereto as Exhibit A be executed by the Village.

Section 2: **Said contract, attached hereto as Exhibit A is approved. The President and Clerk of this Village are authorized and directed to execute said contract on behalf of the Village. The President, Clerk, Treasurer and other officers of this Village, and each of them, are authorized and directed to make such payments, execute such documents, and to perform such other acts on behalf of this Village as may be required to carry said contract into effect, and to perform the obligations of this Village thereunder.**

Passed February 22, 1955.

> (The contract attached as Exhibit A is a form in common use in Illinois with rider attached containing provisions required by the ordinance.)

WESTCHESTER ORDINANCE OF AUGUST 9, 1955

(Pertinent text)

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WESTCHESTER, COOK COUNTY, ILLINOIS:

Section 1: This Board finds:

(a) It is in the interest of this Village that there be constructed and installed extensions and improvements to the water works and water supply system (herein referred to as "the water works system") of this Village consisting of the following:

> DIVISION A: The construction of a suitable concrete foundation for the standpipe described under the caption "DIVISION B," below;
>
> The construction of a booster pumping station, housing two 3,000,000 gallon booster pumps, together with valves, pipes and appurtenances;

• • • • •

> DIVISION B: The construction of a 1,500,000 gallon standpipe.

• • • • •

(b) Said extensions and improvements to the water works system of this Village are described and located in the plans and specifications on file in the Office of the Village Clerk of this Village, prepared by Consoer, Townsend and Associates, engineers employed by this Village * * *.

(c) The engineers, Consoer, Townsend and Associates, have estimated the cost of construction of said extensions and improvements to the water works system of this Village at $385,000, itemized as follows:

CONTRACTS — DIVISION A

* * * * *

Total Estimate—DIVISION A	$ 90,000.00

CONTRACT — DIVISION B

1,500,000 Gallon Standpipe

Estimated construction cost, DIVISION B, (exclusive of Engineering, Legal and Miscellaneous Expense)	$ 80,000.00

* * * * *

Total Estimate—DIVISION C	$145,000.00

ENGINEERING, LEGAL AND MISCELLANEOUS EXPENSE

For engineering and inspection	$ 28,000.00
For cost of land and easements	18,525.00
For legal and miscellaneous expense	10,000.00
For interest during construction	13,475.00
Total Additional Expense	$ 70,000.00
GRAND TOTAL—CONSTRUCTION COST	$385,000.00

(d) In order to pay the cost of said extensions and improvements to the water works system of this Village, it is necessary that Water Revenue Bonds in the principal amount of $385,000 be issued under Article 78 of the Revised Cities and Villages Act. No such Water Revenue Bonds are now outstanding.

Section 2: The plans and specifications referred to in Paragraph (b) of Section 1 hereof, for the construction of extensions and improvements to the water works system of this Village, are approved and incorporated herein by reference, and said extensions and improvements shall be constructed in accordance therewith. Said plans and specifications are on file, and shall remain on file, in the Office of the Village Clerk of this Village, subject to inspection by the public.

Section 3: The estimate of the cost of construction of said extensions and improvements, set forth in Paragraph (c) of Section 1, above, is approved and is found by the President and Board of Trustees of this Village to be $385,000.

Section 4: The period of usefulness of said extensions and improvements is determined to be 40 years.

Section 5: For the purpose of paying the cost of construction of said extensions and improvements, there shall be issued and sold water revenue bonds of this Village, to be designated "Water Revenue Bonds," in the aggregate principal amount of $385,000. Said bonds shall be dated September 1, 1955; shall be of the denomination of $1,000 each; shall be numbered consecutively from 1 to 385, inclusive; bonds numbered 1 to 155 inclusive shall bear interest at the rate of 3½% per annum, payable semiannually on March 1 and September 1 of 1956 and of each year thereafter; bonds numbered 156 to 385 inclusive shall bear interest at the rate of 3¼% per annum, payable semiannually on March 1 and September 1 of 1956 and of each year thereafter. Said bonds shall mature (subject to the right of this Village to call bonds numbered 96 to 385, inclusive, for prior redemption, as herein provided) serially and in numerical order on September 1 of each of the years 1960 to 1985, inclusive as follows:

(Here is set forth schedule of maturity dates)

* * * * *

PASSED August 9, 1955.

WESTCHESTER RESOLUTION
OF SEPTEMBER 27, 1955

A. Under date of February 22, 1955, pursuant to Ordinance No. 55-430, approved that date, entitled, "An Ordinance to Provide for the Purchase of a Site for Proposed Standpipe for Storage of Water," this Village and Oakridge Cemetery Corporation entered into a contract, attached to and approved in said ordinance, dated February 22, 1955, and providing for purchase by this Village from Oakridge Cemetery Corporation, for a consideration of $17,000, of the site in Oakridge Cemetery described in said ordinance and contract.

B. Said contract provides that the purchase of said site shall be contingent upon the sale by this Village, within 18 months, of $385,000 in Water Revenue Bonds needed to provide funds for construction of the standpipe and other improvements to the waterworks system of this Village.

C. Pursuant to said contract, this Village and Oakridge Cemetery Corporation entered into an escrow agreement, whereunder Oakridge Cemetery deposited in escrow with Chicago Title and Trust Company, a warranty deed conveying the proposed standpipe site to this Village; and this Village deposited in escrow, $17,000, to be paid to Oakridge Cemetery Corporation upon issue and sale of said water revenue bonds, provided such issue and sale took place within 18 month thereafter. This Village also deposited in escrow a quitclaim deed to be delivered to Oakridge Cemetery Corporation in the event the bonds were not sold within the time specified, which deed, upon delivery, would reconvey the standpipe site to Oakridge Cemetery Corporation.

D. The warranty deed conveying the standpipe site to this Village has been recorded, and Chicago Title and Trust Company has issued its report, (copy of which, addressed to Trude & Kahane, attorneys for Oakridge Cemetery Corporation, is hereto attached and made a part hereof) showing title in the standpipe site to be in this Village. The title, however, is subject to defeasance if the revenue bonds are not issued and sold within the time specified, in which event, the $17,000 would be returned to this Village, and the site would be reconveyed to Oakridge Cemetery Corporation.

E. This Board finds it to be in the interest of this Village that the purchase of said standpipe site be consummated immediately; that the $17,000 purchase price for said standpipe site be paid to Oakridge Cemetery Corporation; and that the escrow be terminated so that the title to the standpipe site can be acquired by this Village, and will not be subject to destruction or reconveyance upon the happening of any contingency.

THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WESTCHESTER, ILLINOIS:

That the President, Clerk and Treasurer of this Village are authorized and directed:

1. In the name and on behalf of this Village, to enter into such agreements with Oakridge Cemetery Corporation and Chicago Title and Trust Company as may be necessary or appropriate to terminate the escrow above referred to, and to provide for immediate acquisition of title to the above-described standpipe site in Oakridge Cemetery, which title shall not be subject to defeasance or reconveyance upon the happening of any contingency whatsoever.
2. To acquire a guaranty policy from Chicago Title and Trust Company guaranteeing title in this Village subject only to the matters set forth in its attached report on title.
3. To provide for immediate payment to Oakridge Cemetery Corporation of $17,000 as the purchase price for said standpipe site, and to acquire and destroy the quitclaim deed now held in escrow at Chicago Title and Trust Company which, upon delivery to Oakridge Cemetery Corporation, would reconvey the site to Oakridge Cemetery Corporation.
4. To do all things necessary or appropriate to acquire indefeasible title to the standpipe site at the earliest practicable date.

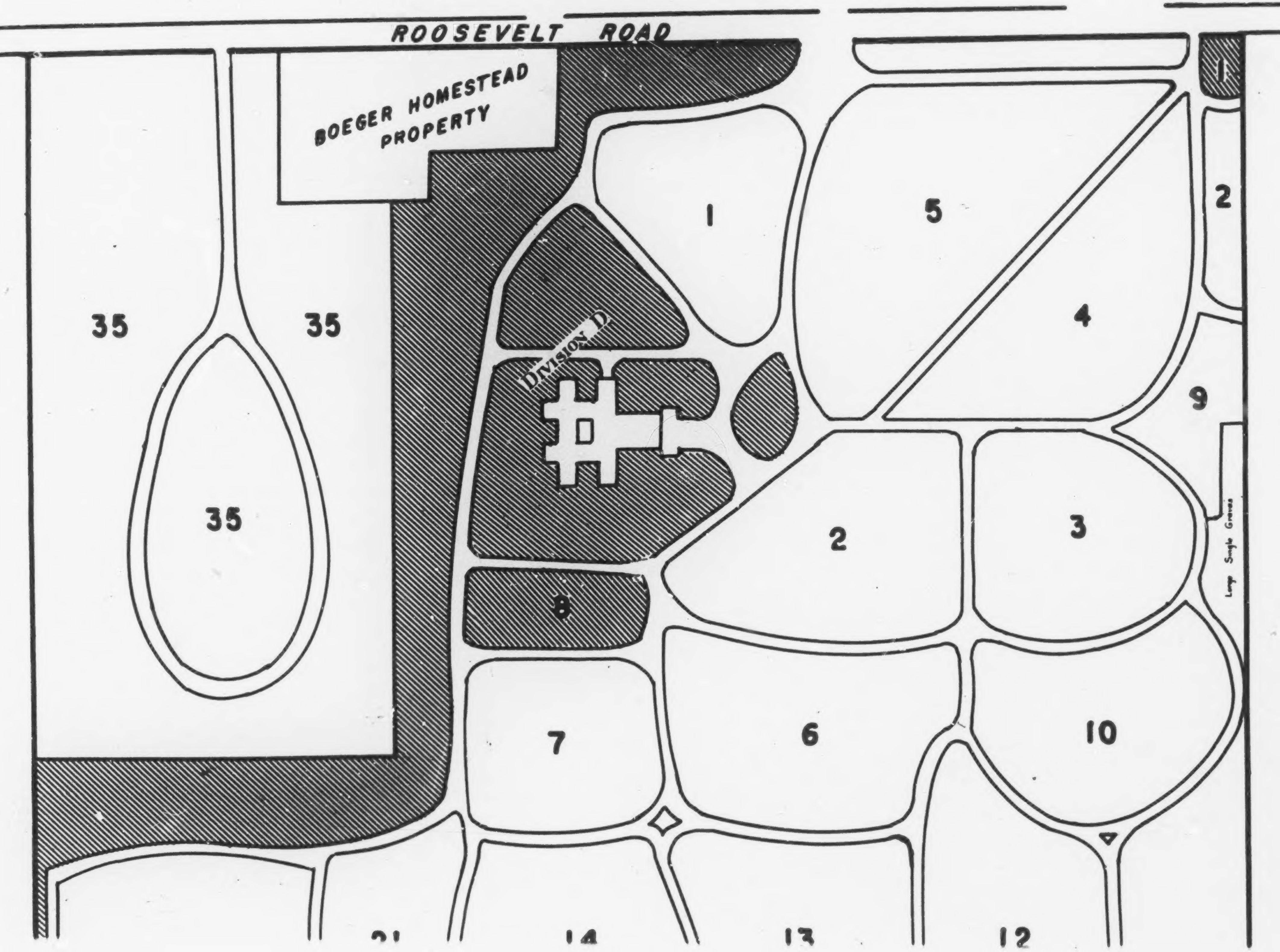
SECTIONS 1 AND 5 OF THE ILLINOIS GENERAL CORPORATION ACT OF 1872 AS AMENDED IN 1879

(Pertinent text)

1. For All Lawful Purposes, Except, Etc.) § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That corporations may be formed in the manner provided by this act for any lawful purpose except banking, insurance, real estate brokerage, the operation of railroads and the business of loaning money: *Provided,* that horse and dummy railroads, and organizations for the purchase and sale of real estate for burial purposes only, may be organized and conducted under the provisions of this act: *And provided further,* that corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations.

5. Powers—Restriction as to Real Estate.) § 5. Corporations formed under this act shall be bodies corporate and politic for the period for which they are organized; may sue and be sued; may have a common seal, which they may alter or renew at pleasure; may own, possess, and enjoy so much real and personal estate as shall be necessary for the transaction of their business, and may sell and dispose of the same when not required for the uses of the corporation. They may borrow money at legal rates of interest, and pledge their property, both real and personal, to secure the payment thereof; and may have and exercise all the powers necessary and requisite to carry into effect the objects for which they may be formed: * * *.

OAKRIDGE CEMETERY
IN
COOK COUNTY --- ILLINOIS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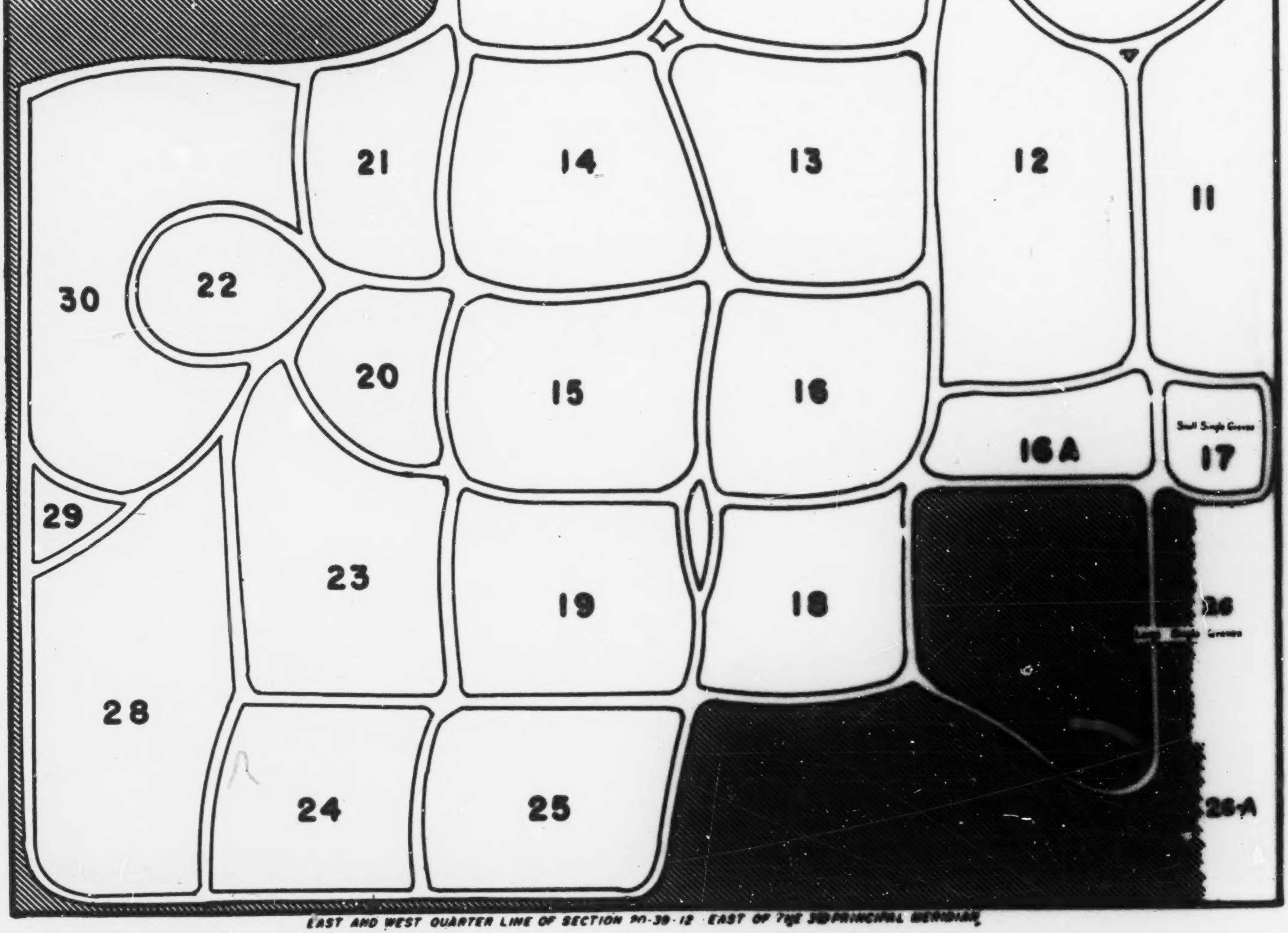
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26
Large Single Graves
28
24
25
26-A
EAST AND WEST QUARTER LINE OF SECTION 20-39-12 EAST OF THE 3RD PRINCIPAL MERIDIAN

▨ AREAS IN WHICH THERE ARE NO BURIALS.